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A REPORT TO THE ACTING GOVERNOR
AND THE CHIEF JUDGE

RECOMMENDATIONS ARISING FROM THE 1976 MARYLAND
CONFERENCE ON JUDICIAL NOMINATING COMMISSIONS

October 1977

TABLE OF CONTENTS AND SUMMARY

<u>Background</u>	1
<u>Recommendations.</u>	
A. <u>Commission Structure and Composition</u>	
1. Each Commission should have a vice-chairman	2
2. Commission composition should not be changed	3
3. The Basic eligibility requirement for lawyer members of trial courts commissions should be maintenance of a principal office in the circuit	6
4. The Selection Regulations should be amended to provide for better lawyer apportionment	7
5. Commission members should be prohibited from holding an office of profit or trust under the Constitution or laws of the State; from being full-time State employees; and from holding an office in a political party.	9
6. Terms of commission members should coincide with the Governor's elected term	14
B. <u>Commission Procedures.</u>	
1. Press releases should be used when judicial vacancies occur	14
2. Informal recruiting should be encouraged	16
3. A uniform personal data questionnaire should be used by all commissions	17
4. Provisions should be made to facilitate a commission's obtaining information beyond that contained in the personal data questionnaire	17
5. Provisions should be made to permit a candidate to respond to substantial adverse information.	19
6. An understanding should be reached as to the form and content of Bar Association recommendations	20
7. Names of applicants should be kept confidential; Commissions should not release personal data question- naires to Bar Associations or Bar committees	22
8. The present provisions pertaining to Commission member disqualification for relationship with a candidate should not be changed.	25
9. Interviews should be encouraged.	27
10. Commission screening and voting procedures should be modified so as to require a specified minimum number of commission members to be present at a voting session; to prohibit voting for a specific minimum number of candidates; and to prohibit proxy and absentee voting; but the number of votes required to nominate should remain at no less than seven; in addition, a member who fails to attend a specified minimum number of commission meetings should be removed from the commission.	29

a.	At least nine commission members shall be present at a commission voting session	27
b.	A commission member not attending a specified minimum number of commission meetings should be removed from the commission	30
c.	Voting for a specified minimum number of candidates should be prohibited	31
d.	Neither proxy nor absentee voting should be permitted	32
11.	There should be no change in the minimum number of names to be included on a list	34
C.	<u>Existing Election Procedures for Judges at the Supreme Bench and Circuit Court Levels Should be Eliminated</u>	36

Unfinished Business.

A.	Dearth of Applicants	38
B.	Maintenance of Files	39
C.	Time-lag from Filing Deadline to Meeting	40
D.	The Standard of Legally and Professionally Most Fully Qualified.	41
E.	Should the Governor be Required to Make an Appointment Within a Limited Time?	41

Composite Drafts of Documents, including all Proposed Amendments

Executive Order of October 4, 1977	iv
Court of Appeals Appellate and Trial Court Judicial Selection Regulations of January 6, 1975	xviii
Chief Judge's Administrative Order of March 1 and June 19, 1975 (Procedural Rules)	xxiii
Proposed Uniform Personal Data Questionnaire	xxvi

APPENDICES

Appendix I. "The Judicial Nominating Commission Process in Maryland - Background, Development, and Considerations for Change (Oct. 1976). Note that this document itself includes Appendices A - H, inclusive.

Appendix II. Executive Order 10.01.1977.08, October 4, 1977

Appendix III. Summary of Proceedings of the Maryland Conference on Judicial Nominating Commissions.

RECOMMENDATIONS ARISING FROM THE
1976 MARYLAND CONFERENCE ON
JUDICIAL NOMINATING COMMISSIONS

A Report to the Acting Governor and the Chief Judge of the
Court of Appeals from the State Court Administrator

October, 1977

Background.

On December 16, 1976, the Hon. Alan M. Wilner, then the Governor's Chief Legislative Officer, convened the Maryland Conference on Judicial Nominating Commissions.

The Conference took place approximately two years after Governor Mandel's 1974 Executive Order restructuring the commissions, and some six and one-half years after the initial creation of the commissions in 1970. The purpose of the Conference was to review the experiences of the commissions over these periods of time, and to recommend to both of you any improvements in structure or procedure that might make the commissions more effective.

Participating in this effort were 38 conferees, both lawyers and lay people, representing eight of the nine nominating commissions, the judiciary, both Houses of the General Assembly, the Maryland State, Women's, and Federal Bar Associations, 14 County Bar Associations, the League of Women Voters, and the American Judicature Society. The conferees had prepared for their task by review of a 60 page study of "The Judicial Nominating Commission Process in Maryland - Background, Development, and Considerations for Change."^{1/}

^{1/} Copy attached, as Appendix I.

As Secretary of the Conference, as well as of the several nominating commissions, it is my function to transmit to you the recommendations made by the Conference, as well as certain other suggestions based upon Conference comments or observations of commission activities.

Recommendations.

At the outset, I am pleased to note that the Conference was supportive of the nominating commission concept. It favored retention of the commissions. The proposals it made were all designed to strengthen and improve the working of the commissions.

A. Commission Structure and Composition.

Under the Executive Order of October 4, 1977, as under the Executive Order of December 18, 1974,^{2/} each of the nine nominating commissions consists of six lawyers elected by members of the Bar; six lay persons appointed by the Governor, and a Chairman appointed by the Governor. The State Court Administrator is Secretary to each commission. The Administrative Office of the Courts provides staff support for all of them.

1. Each Commission Should have a Vice-chairman (Paragraphs 16 and 17)^{3/}

Although some conferees thought that the commission chairman should be selected by some process other than gubernatorial appointment, the majority favored retention of the gubernatorial appointment system.

However, it was noted that some chairmanships had remained vacant for extended periods, thus making it difficult for commissions to function. Illness

2/ An Executive Order of December 14, 1974, established the commissions in their present form. It was that Executive Order that was before the 1976 Conference. The Acting Governor amended the 1974 Executive Order by an Executive Order dated October 4, 1977. The 1977 Order in most respects restated the 1974 Order, so reference in this paper will be chiefly to the 1977 Order, except when it is important to note provisions of the 1974 order. The 1977 Order is attached as Appendix II. The 1974 Order may be found in Appendix A of Appendix I.

3/ The paragraph references are to the "Summary of Proceedings of the Maryland Conference on Judicial Nominating Commissions," attached as Appendix III.

or absence of a chairman could also cause problems. Therefore, the Conference recommended that each commission have a vice-chairman, to be elected by vote of a majority of the full authorized membership of the commission, and to have authority to perform all of the duties of the chairman in the latter's absence.

This recommendation could be accomplished by amending the Executive Order as follows:^{4/}

In each of paragraphs 3(a) and 4(a), renumber subparagraph (4) as (5) and insert a new subparagraph (4), to read:

- (4) [THE]^{5/} [EACH]^{6/} COMMISSION SHALL ELECT A VICE-CHAIRMAN FROM AMONG ITS MEMBERS BY VOTE OF A MAJORITY OF ITS FULL AUTHORIZED MEMBERSHIP. THE VICE-CHAIRMAN MAY PERFORM ANY OF THE DUTIES OF THE CHAIRMAN DURING THE LATTER'S ABSENCE, UNAVAILABILITY, OR INABILITY TO ACT.

2. Commission Composition Should not be Changed. (Paragraphs 18 and 19).

The Conference agreed that the basic commission composition (one chairperson, six lay members, six lawyers) should remain unchanged nor was any real dissatisfaction expressed with the notion of gubernatorial appointment of the chairperson and the lay members and the election of lawyer members. However some months after adjournment of the Conference, a question was raised about apportionment of membership in a multi-county circuit in which one of the counties is substantially larger than the others. Specifically, the issue was raised with respect to the Seventh Circuit Commission, which includes Prince George's, Calvert, Charles, and St. Mary's Counties. The lawyer population in Prince George's County probably now exceeds 700, and thus is over seven times the

^{4/} Several of the recommendations involve amendments to the same portions of the Executive Order, the Court of Appeals Selection Regulations, or other documents. In drafting each proposed amendment, no account has been taken of any other proposed amendment involving that same portion. This is intended to enhance clear understanding of each proposed amendment and to facilitate the acceptance or rejection of each recommendation on the basis of its own merits or demerits. However, attached to the Table of Contents and Summary preceding the full text of the Report are drafts of the 1977 Executive Order and other pertinent documents, incorporating all proposed amendments.

^{5/} Paragraph 3(a) (4) (Appellate Commission)

^{6/} Paragraph 4(a) (4) (Trial Courts Commission)

combined lawyer population of the other three counties in that circuit. Yet, there are only five commission members from Prince George's County: the appointed chairman (a lawyer), two elected lawyer members, and two lay members. Thus, the Prince George's County members constitute less than a majority of the full authorized membership of the commission. This is an important factor because an individual may be nominated only by vote of at least a majority of the full authorized membership.

At present, this appears to be a situation unique to the Seventh Circuit. In the Third Circuit, consisting of Baltimore and Harford Counties, there are eleven members from Baltimore County. In the Fifth Circuit, consisting of Anne Arundel, Carroll, and Howard Counties, there are eight members from Anne Arundel County. In the Sixth Circuit, consisting of Montgomery and Frederick Counties, there are eleven members from Montgomery County. In none of the remaining circuits do we find such substantial disparity between the lawyer population in the largest county in the circuit and the combined lawyer population of the other counties.

Several solutions have been suggested as means of changing this situation. One of them is that commissions should be organized on something less than a circuit basis, perhaps following the district organization of the District Court. This approach would put Prince George's County by itself, with its own commission. The same would be true of other large counties, such as Anne Arundel, Baltimore, and Montgomery. However, this approach would produce a large number of commissions, adding to expense and staffing problems, and it is also thought that there is much to be said for the circuit approach to commission organization. Judges are quite mobile within most of the circuits, as are lawyers, and the views of both lawyers and lay people from throughout a circuit are helpful in judicial selection.

Actually, if a problem exists in the Seventh Circuit, it seems that it could be corrected by the appointive and elective processes. With respect to

lay members, Paragraph 4(a)(2) of the Executive Order requires that in a circuit containing more than one county, at least one lay member must be appointed from each county. That means that three lay persons could be appointed from Prince George's County, instead of the present two, with the other three lay members coming from the other three counties in the circuit.

As to the lawyer members, under the Court of Appeals "Appellate and Trial Court Judicial Selection Regulations" of January 6, 1975,^{7/} the elections of lawyer members are conducted on a circuit basis. Paragraphs 13 and 14 of those regulations in effect provide that there should be at least one lawyer member from each county in the circuit. Thus, in the Seventh Circuit, there could be three lawyer members from Prince George's County (instead of the present two) with the other three lawyer members distributed among the other three counties. Because of the large size of the Prince George's County Bar, this is a matter largely within the control of that Bar.

Therefore, it is apparent that it would be quite possible for there to be six Prince George's County commission members on the Seventh Circuit Commission, and if the chairperson should also be from Prince George's County, there could be seven, or a majority of the full authorized membership of the commission.

Therefore, except to the limited extent suggested in Paragraph 4 below, it is not recommended that any change be made in the provisions relating to apportionment of commission members among the several counties of a multi-county circuit.

Recent commission lists have caused some to question the racial makeup of the commissions. Questions might also be raised about sexual, ethnic, political, geographical or other aspects of commission membership. Because of the diverse demography of the several circuits, it is probably not practicable to prescribe State-wide racial, sexual, or ethnic quotas or goals for commission membership.

^{7/} Appendix B of Appendix I

So far as the elected lawyer members are concerned, membership depends in the first instance on which lawyers are prepared to run for election to the commission, and in the second, on appointment by the Court of Appeals, if candidates for election do not present themselves.

There is no doubt in my mind that in a number of the circuits, the racial composition of the commissions could be improved. I reach the same conclusion as to women. But I think that these issues must be addressed by the appointing authorities and by minority and women members of the Bar, initially rather than by changes in the Executive Order.

3. The Basic Eligibility Requirement for Lawyer Members of Trial Courts Commissions Should be Maintenance of a Principal Office in the Circuit (Paragraph 2).

No problem seems to exist about the apportionment of membership on the Appellate Nominating Commission. Paragraph 3(a), subparagraphs (1) and (3) require, in effect, the appointment of a lay member and the election of a lawyer member from each of the six Appellate Judicial Circuits. This produces a reasonable geographical spread.

But on the Trial Courts Commissions, the picture is a bit different. Here, the Executive Order (Paragraph (4)(a)(2)) calls for six lay persons appointed by the Governor. In addition, it is required that there be six lawyer members, "who reside and are registered voters in the Circuit" (Paragraph 4(a)(3) of the Executive Order).

With respect to the lawyer members, a problem arises in some areas because a lawyer may reside in one circuit but maintain his principal office in another. For example, there are many lawyers who maintain their offices in Baltimore City (the Eighth Circuit) but who reside in Baltimore County (the Third Circuit). While these lawyers may be at least socially familiar with those who reside and practice in Baltimore County, and thus who would be likely candidates for judgeships there, their professional contacts may be more extensive with other lawyers who practice primarily in Baltimore City. Yet the Executive Order prohibits them from serving on the Baltimore City Commission.

It was proposed to the Conference that the geographic eligibility requirements be changed to require that a lawyer member both reside and maintain his principal office for the practice of law in the circuit in which he sought commission membership. That proposal was rejected, and instead the Conference adopted a recommendation that maintenance of a principal office within the circuit be the basic geographic eligibility requirement for lawyers. Since it seems desirable to maintain the requirement that lawyer members be registered voters, thus demonstrating at least a certain minimal interest in public affairs, this recommendation could be achieved by the following amendment to Paragraph 4 of the Executive Order:

4. a. (3) Six persons shall be members of the Maryland Bar who [reside and are registered voters in the Circuit] ARE REGISTERED TO VOTE IN STATE ELECTIONS AND WHO MAINTAIN THEIR PRINCIPAL OFFICES FOR THE PRACTICE OF LAW IN THE CIRCUIT. They shall be elected by the members of the Maryland Bar who [reside and are registered voters in the Circuit] ARE REGISTERED TO VOTE IN STATE ELECTIONS AND WHO MAINTAIN THEIR PRINCIPAL OFFICES FOR THE PRACTICE OF LAW IN THE CIRCUIT.

Paragraphs 8, 9, and 11 of the Court of Appeals Judicial Selection Regulations should also be amended to conform to this change. These amendments would be as follows:

8. In each multi-county Judicial Circuit there shall be at least one member of the Judicial Commission for that Circuit [from] WHO MAINTAINS HIS PRINCIPAL OFFICE FOR THE PRACTICE OF LAW IN each county from which there is a nominee. Such members are hereinafter called "county members."
9. Any lawyer who [both resides and] IS REGISTERED TO VOTE IN STATE ELECTIONS AND WHO maintains his principal office in this State is eligible to vote for all the members of the Trial Court Commission to be elected from the Judicial Circuit in which he maintains his principal office.
11. Nomination for election as a member of a Trial Court Commission shall be by written petition filed with the Administrative Office. Each petition shall state the name of the nominee and the Judicial Circuit from which he seeks election. The nominee shall verify in the petition his status as a lawyer, HIS STATUS AS A REGISTERED VOTER, [his home and] HIS principal office [addresses] ADDRESS, and his intent to serve if elected. [Remainder of Paragraph 11 to remain unchanged].

It should be noted that the present Court of Appeals Judicial Selection Regulations define "principal office".

4. The Selection Regulations Should be Amended to Provide for Better Lawyer Apportionment. (Paragraph 20).

Paragraph 16 of the Court of Appeals Selection Regulations provides for the filling of a vacated position in the lawyer membership of a commission. That is accomplished by vote of the remaining lawyer members, and there is no apportionment problem, since the person selected must "maintain his principal office in the county in which his predecessor maintained his principal office."

However, under Paragraph 18 of those Regulations, in any case in which there is no valid nomination of a lawyer member pursuant to the original election process, the Court of Appeals apparently has unrestricted authority to appoint someone to fill that position, subject to the requirement that the appointee maintain his principal office within the circuit. This could mean that a county within a circuit might be without lawyer representation.

The same result can occur under the voting provisions of Paragraph 13, if there happen to be at least six lawyer-nominees from only one county in a circuit.

The Sixth Circuit elections in 1975 afford an example of what can happen under these provisions. Seven lawyers from Montgomery County were nominated. There were no nominees from Frederick County. As a consequence, six of the Montgomery County candidates were elected, thereby filling the lawyer membership of the commission and excluding therefrom any lawyer member from Frederick County.

In a number of other jurisdictions, there were no lawyer nominees and the Court was required to appoint the lawyer members. It could have exercised this power of appointment to the exclusion of some county within the circuit.

I recognize that there may be some counties in which there are no lawyers who wish to serve on a commission. This could occur in a small county with only a handful of lawyers, some of whom might be ineligible because of holding some public office, and others of whom might not wish to serve on the commission because they themselves might have judicial ambitions. But where possible, it seems desirable to assure that there be at least one lawyer member from each county in the circuit.

Thus, amendments should be made to the Court of Appeals Selection Regulations to assure two things:

1. That a large county cannot sweep all the lawyer memberships (as was the case in the Sixth Circuit) simply because there is no lawyer nominee from one or more of the other counties in the circuit; and
2. To require the maximum feasible amount of apportionment when the Court of Appeals makes an initial appointment when there has been no election.

These objectives could be attained by the following amendments to the Selection Regulations:

Amend the second sentence of Paragraph 13 of the Selection Regulations to read:

Each voter in any other circuit, as a condition of the validity of his ballot, shall cast that number of votes as the number of members remaining to be elected after the close of nominations, REDUCED BY ONE FOR EACH COUNTY IN THE CIRCUIT AS TO WHICH THERE IS NO NOMINEE.

Amend Paragraph 18 of the Regulations by adding the following sentence:

IN MAKING APPOINTMENTS UNDER THIS PARAGRAPH, THE COURT OF APPEALS SHALL ASSURE THAT EACH TRIAL COURT COMMISSION INCLUDES AT LEAST ONE LAWYER MEMBER FROM EACH COUNTY IN THE CIRCUIT, IF EACH COUNTY IN THE CIRCUIT INCLUDES AT LEAST ONE LAWYER WHO IS QUALIFIED FOR SERVICE ON THE COMMISSION AND WILLING TO ACCEPT THE APPOINTMENT.

These proposals are consistent with recommendations made by the Conference.

5. Commission Members Should be Prohibited From Holding an Office of Profit or Trust Under the Constitution or Laws of the State; From Being Full-time State Employees; and from Holding an Office in a Political Party. (Paragraph 21).

Provisions of the present Executive Order and of the Court of Appeals Selection Regulations are not uniform with respect to disqualification from commission membership because of the holding of some other position.

Paragraph 3(a)(1) of the Executive Order provides that the Chairman of the Appellate Commission "may not be an elected State official or a full-time employee of the State."

Paragraph 3(a)(2) includes a similar prohibition with respect to lay members of the Appellate Commission.

Paragraph 4(a)(1) does not include any such prohibition with respect to the chairmen of the Trial Courts Commissions, but does include, in subparagraph (2), a similar prohibition with respect to lay members.

The Executive Order does not include any such disqualification provisions for lawyers. However, Paragraph 10 of the Court of Appeals Selection Regulations provides that a person is eligible for election to lawyer membership if he "is not an elected governmental official or full-time Federal, State, or municipal official or employee...."

Thus, there seems to be a gap as to the chairmanships of the Trial Courts Commissions and a disparity as between the provisions applying to lay members and lawyer members.

The Conference found this a difficult issue. Although the 1975 questionnaires completed by commission members showed a strong consensus (60 to 5) in favor of uniform prohibitions for both lay and lawyer members, and in favor of prohibiting commission service by elected State officials, full-time State employees, elected government officials, full-time Federal employees, full-time county employees, and full-time municipal employees, debate at the Conference apparently produced some change of attitude.

Initially, the conferees agreed that all elected public officials at any governmental level should be excluded. They also agreed that all full-time government employees should be excluded. But further discussion produced a motion for deferral of the entire issue of disqualification to some future date. That motion was carried.

The problems are several. On the one hand, there was a desire to exclude public officials who might be perceived as receptive to influence from the

Governor because of political factors. In addition, there was some concern that highly-placed public officers might exert undue pressures on other commission members. Some also felt that full-time public employees could be perceived as subject to influence by political officials.

On the other hand, there was a concern that unduly broad restrictions would unreasonably narrow the potential membership of the commissions.

The only clear consensus emerging from the Conference was that there should be some restrictions and that they should be uniform as to both lay and lawyer members.

An examination of the relevant provisions used by other states indicates that the two most general prohibitions relate to the holding of public office (whatever that may mean) and the holding of office in a political party.

It is suggested that these provisions be adapted for use in Maryland. As to the public office issue, I propose that the term "office of profit or trust under the Constitution or laws of the State" be used since that phrase has a relatively well-understood meaning in Maryland and probably encompasses the holders of most major political offices. I suggest that the prohibition against full-time State employees be continued, but that there be no prohibition against county and municipal employees, since descending to these levels might well be counter-productive. Finally, I would propose adding a prohibition with respect to those who hold office in a political party.

Obviously, these approaches do not constitute a perfect response to concerns about conflicts of interest or political influence, but I suggest they are a reasonable compromise.

I further suggest that all such provisions be included in the Executive Order itself, rather than those pertaining to lawyer members being relegated to the Court of Appeals Selection Regulations.

These recommendations could be accomplished by the following amendments:

Amend Paragraph 3 of the Executive Order to read as follows:

3.

(a) The Appellate Judicial Nominating Commission is created as part of the Executive Department. It consists of 13 persons and a non-voting Secretary, chosen as follows:

(1) One person, who shall be the Chairman, shall be appointed by the Governor. The Chairman may but need not be a lawyer, and shall be selected from the State at large. [He may not be an elected State official or a full-time employee of the State.] HE MAY NOT HOLD AN OFFICE OF PROFIT OR TRUST UNDER THE CONSTITUTION OR LAWS OF THIS STATE, AN OFFICE IN A POLITICAL PARTY, OR BE A FULL-TIME EMPLOYEE OF THE STATE.

(2) One person shall be appointed by the Governor from each of the Appellate Judicial Circuits, and shall be a resident and registered voter in the circuit from which he is appointed. These persons may not be lawyers, [elected State officials, or full-time employees of the State] HOLD AN OFFICE OF PROFIT OR TRUST UNDER THE CONSTITUTION OR LAWS OF THIS STATE, AN OFFICE IN A POLITICAL PARTY, OR BE FULL-TIME EMPLOYEES OF THE STATE.

(3) One person, who shall be a member of the Maryland Bar, shall be elected by the members of the Maryland Bar in each of the six Appellate Judicial Circuits. THESE PERSONS MAY NOT HOLD AN OFFICE OF PROFIT OR TRUST UNDER THE CONSTITUTION OR LAWS OF THIS STATE, AN OFFICE IN A POLITICAL PARTY, OR BE FULL-TIME EMPLOYEES OF THE STATE. The elections in each circuit shall be conducted by the State Court Administrator pursuant to rules promulgated by the Court of Appeals.

(4) The State Court Administrator is ex-officio, the non-voting Secretary of the Commission.

Amend Paragraph 4 of the Executive Order to read as follows:

4.

(a) Creation and Composition.

A Trial Court Judicial Nominating Commission is created as part of the Executive Department for each of the eight judicial circuits of the State. They each consist of 13 persons, and a non-voting Secretary, chosen as follows:

(1) One person, who shall be the Chairman, shall be appointed by the Governor. The Chairman may but need not be a lawyer, but shall be a resident and registered voter of the Judicial Circuit. HE MAY NOT HOLD AN OFFICE OF PROFIT OR TRUST UNDER THE CONSTITUTION OR LAWS OF THIS STATE, AN OFFICE IN A POLITICAL PARTY, OR BE A FULL-TIME EMPLOYEE OF THE STATE.

(2) Six persons shall be appointed by the Governor from among the residents and registered voters of the Judicial Circuit. These persons may not be lawyers, [elected State officials, or full-time employees of the State] HOLD AN OFFICE OF PROFIT OR TRUST UNDER THE CONSTITUTION OR LAWS OF THIS STATE, AN OFFICE IN A POLITICAL PARTY, OR BE FULL-TIME EMPLOYEES OF THE STATE. If the Judicial Circuit contains more than one county, at least one person shall be appointed from each county in the Circuit, and shall be a resident and registered voter of such county.

(3) Six persons shall be members of the Maryland Bar who reside and are registered voters in the Circuit. THESE PERSONS MAY NOT HOLD AN OFFICE OF PROFIT OR TRUST UNDER THE CONSTITUTION OR LAWS OF THIS STATE, AN OFFICE IN A POLITICAL PARTY, OR BE FULL-TIME EMPLOYEES OF THE STATE. The election shall be conducted by the State Court Administrator pursuant to rules promulgated by the Court of Appeals.

(4) The State Court Administrator is, ex-officio, the non-voting Secretary of each Commission.

Amend Paragraphs 3 and 10 of the Court of Appeals Selection Regulations to read as follows:

3. Any one who either resides or maintains an office within the State and who [is not an elected governmental official or a full-time Federal, State, or municipal official] MEETS THE ELIGIBILITY REQUIREMENTS OF THE EXECUTIVE ORDER ESTABLISHING JUDICIAL NOMINATING COMMISSIONS is eligible to serve as the Appellate Commission member from the Appellate Judicial Circuit in which he either resides or maintains his office.
10. Any eligible voter under Regulation 9 who [is not an elected governmental official or a full-time Federal, State, or municipal official or employee] MEETS THE ELIGIBILITY REQUIREMENTS OF THE EXECUTIVE ORDER ESTABLISHING NOMINATING COMMISSIONS is eligible for election to the Trial Court Commission for that Judicial Circuit in which he maintains his principal office.

6. Terms of Commission Members Should be Made to Coincide with the Governor's Elected Term.

Although the issue was not raised at the 1976 Conference, subsequent events have made it desirable to clarify the term of office provisions of the Executive Order.

The Acting Governor has indicated that he reads the 1974 Order as meaning that terms last during the full period of time for which the Governor was elected. To make this clear, Paragraphs 3(b) and 4(b) of the Order should be amended to read as follows:

The terms of the members of the [Commission]^{8/} [Commissions]^{9/}
[are coextensive with the term of the Governor] EXTEND TO
THE DATE OF QUALIFICATION OF THE GOVERNOR ELECTED AT EACH
QUADRIENNIAL ELECTION, and until their successors are duly chosen.

B. Commission Procedures.

1. Press Releases Should be Used When Judicial Vacancies Occur.
(Paragraph 2).

The Executive Order does not spell out what procedures are to be used to give notice of an existing or forthcoming judicial vacancy. This subject is addressed in an Administrative Order adopting rules of procedure for the Appellate and Trial Courts Judicial Nominating Commissions, promulgated by the Chief Judge of the Court of Appeals on March 1, 1975.^{10/} The Administrative Order directs the Commission's Secretary to notify the State Bar Association "and other appropriate Bar Associations of the vacancy." It also directs him to "provide for newspaper notice of the existence of the vacancy" in consultation with the commission chairman.

8/ Paragraph 3(b) (Appellate Commission)

9/ Paragraph 4(b) (Trial Court Commission)

10/ This Order was promulgated pursuant to Paragraph 6.(a) of the Executive Order. The Administrative Order of March 1, 1975, and a subsequent Administrative Order of June 19, 1975, may be found in Appendix C of Appendix I.

The general practice as to newspaper notice has been the insertion of announcements in the Daily Record. These are run at least three times per week for at least three consecutive weeks in the Eighth Circuit (Baltimore City) and at least three times per week for at least two consecutive weeks in the other parts of the State.

A few commissions, notably the Fifth Circuit Commission, have supplemented this Daily Record notice with some sort of press release procedure. The press releases often give a general description of commission functions and operations. While the Daily Record notice plus notices to bar associations probably are adequate to advise lawyers of a vacancy, a press release published in a local newspaper may be much more effective as a means of getting information to the general public.

The conferees generally viewed the press release procedure as desirable. The consensus was that these could be good vehicles to explain commission operations to the public and might also elicit from some citizens comments or recommendations about potential candidates. However, the conferees recognized that because of the limited facilities of the Administrative Office of the Courts, and because of the importance of local contact with local newspapers, the press release procedure could be more effectively handled through a commission chairman or member familiar with the local scene. Consequently, the Conference recommended that: "Press releases are to be utilized, and they should be handled locally by a commission chairperson or member designated by the commission."

This recommendation may be implemented by the following amendment to Rule 1 contained in the Administrative Order promulgated by the Chief Judge of the Court of Appeals on March 1, 1975:

1. Upon notification by the Secretary that a vacancy exists or is about to occur in a judicial office for which a Commission is to make nominations, the Chairman in consultation with the Secretary, shall establish a date for an initial Commission meeting to consider nominations for the vacancy. The Secretary shall advise Commission members of the date, place, and time of the meeting and shall notify the Maryland State Bar Association, Inc., and other appropriate bar associations of the vacancy. In addition, the Secretary, in consultation with the Chairman, shall provide for APPROPRIATE newspaper notice of the existence of the vacancy [as appropriate], AND THE CHAIRMAN OR SOME OTHER MEMBER DESIGNATED BY THE COMMISSION, SHALL ISSUE ONE OR MORE PRESS RELEASES TO ONE OR MORE NEWSPAPERS CIRCULATED WITHIN THE CIRCUIT IN WHICH THE VACANCY EXISTS. THE PRESS RELEASE SHOULD NOTE THE VACANCY, EXPLAIN THE RESPONSIBILITIES AND FUNCTIONS OF THE NOMINATING COMMISSION, AND INVITE COMMENTS BY THE PUBLIC WITH RESPECT TO QUALIFIED CANDIDATES TO FILL IT.

2. Informal Recruiting Should be Encouraged. (Paragraph 3).

Paragraph 6(b) of the Executive Order presently urges commission members to "seek ... applications of proposed nominees" Actual practice in this regard seems to vary considerably from commission to commission, although commissioners as a group favor the concept of recruiting.

For example, Appellate Commission members not infrequently contact persons they think would make desirable candidates, and urge them to submit their names. This procedure is less common on some of the Trial Court Commissions.

At the Conference, there was some debate as to the benefits of formal recruiting, under which persons would be invited to submit their names by some sort of commission action, as opposed to informal recruiting, involving only action by individual commission members. The Conference supported the concept of informal recruiting, but thought that the matter should be left to the initiative of individual commission members. Consequently, no amendment to any document is proposed in this regard.

3. A Uniform Personal Data Questionnaire Should be Used by all Commissions. (Paragraphs 8 and 9).

For ease of administration and to assure that essential data are gathered for all candidates, the conferees decided that a standard questionnaire should be utilized by all commissions. While there was some concern about the possible need for gathering more extensive medical or psychiatric histories, the Conference rejected this proposal and instead recommended that essentially the form now used in the Third and Eighth Circuits be adopted as the standard, with an additional question about involvement in litigation.

Since the Conference, one Commission has also suggested the desirability of requesting names of at least three references. A questionnaire conforming to the Conference proposals appears in the early portions of the report, following the consolidated redraft of the Executive Order and other documents.

As the Conference pointed out, a standard questionnaire could be implemented simply by its preparation in the Administrative Office of the Courts. However, it seems to me that if the policy of uniformity is to be adopted and is to be truly effective, the Executive Order should make this plain. Thus, I propose the following amendment to Paragraph 6(b) of the Executive Order:

6.

(b) Upon notification by the Secretary that a vacancy exists or is about to occur in a judicial office for which a Commission is to make nominations, the Commission shall seek and review applications of proposed nominees for the judicial office. APPLICATION SHALL BE MADE ON THE FORM PRESCRIBED BY THE SECRETARY. [Remainder of Paragraph 6(b) to remain without change].

4. Provisions Should be Made to Facilitate a Commission's Obtaining Information Beyond that Contained in the Personal Data Questionnaire. (Paragraph 13).

Under present procedures, there is nothing to inhibit commission members from obtaining whatever information they deem appropriate from whatever sources they deem appropriate, in order to supplement information contained

in the personal data questionnaire. Some commission members exercise this privilege; others do not. The personal reference information now provided for in the questionnaire discussed under Paragraph 3, above, should be of some assistance in this regard.

Nevertheless, a majority of the Conference members thought that this authority should be made explicit, and that there should be some reference to possible sources of such information, such as the Attorney Grievance Commission, judges, and law-enforcement agencies.

Maryland Rule BV 8.b. (4) authorizes the Attorney Grievance Commission to give appropriate information to a judicial nominating commission, acting through its chairman. Advisory Opinion No. 28 of the Judicial Ethics Committee (April 3, 1975) indicates that it is appropriate for a judge "to express an opinion regarding the professional qualifications of an individual who is being considered for appointment to judicial office" when inquiry is made by a nominating commission member. However, problems may exist with respect to obtaining criminal history record information, in view of the enactment of Chapter 239, Acts of 1976, codified as Article 27, Sections 742 and following of the Code.

Article 27, §749, which takes effect December 31, 1977, provides that: "A criminal justice agency and the central repository may not disseminate criminal history record information except in accordance with the applicable Federal law and regulations."

The Federal regulations contain rather stringent prohibitions against the release of criminal history record information, particularly non-conviction data, to any agency except a criminal justice agency. However, §20.21 (b)(2) of those regulations (41 CFR 11715, March 19, 1976) permits dissemination to any individual or agency "for any purpose authorized by ... Executive Order...."

Therefore, it is recommended that Paragraph 6(c) of the Executive Order be amended as follows:

6.

(c) The Commission shall evaluate each proposed nominee. IN THE COURSE OF ITS EVALUATION, A COMMISSION MAY SEEK INFORMATION BEYOND THAT CONTAINED IN THE PERSONAL DATA QUESTIONNAIRE SUBMITTED TO IT. IT MAY OBTAIN PERTINENT INFORMATION FROM KNOWLEDGEABLE PERSONS KNOWN TO COMMISSION MEMBERS, THE ATTORNEY GRIEVANCE COMMISSION, JUDGES, PERSONAL REFERENCES GIVEN BY THE CANDIDATE, CRIMINAL JUSTICE AGENCIES, OR OTHER SOURCES. A CRIMINAL JUSTICE AGENCY, INCLUDING THE CENTRAL REPOSITORY, IS AUTHORIZED TO RELEASE CRIMINAL HISTORY RECORD INFORMATION, INCLUDING CONVICTION AND NON-CONVICTION DATA, TO A COMMISSION, UPON THE REQUEST OF THE COMMISSION CHAIRMAN, FOR THE PURPOSE OF EVALUATING A CANDIDATE. [Balance of Paragraph 6(c) to remain in present form].

5. Provisions Should be Made to Permit a Candidate to Respond to Substantial Adverse Information

Although the Conference did not consider the matter expressly, the previous recommendations open some additional problem areas. If a Commission obtains information beyond that contained in the personal data questionnaire, and if some of that information should be of a substantially adverse nature, what should be done about permitting the candidate to respond to it? Without getting into major constitutional law debates, it seems not unreasonable that the candidate should have at least some opportunity to refute information of this kind.

The precise mechanism for response perhaps need not be spelled out at this juncture. One possibility, obviously, is the interview process discussed below. But it does seem fair, at least to me, that a commission should be required to advise a candidate of any substantial adverse comment and to give the candidate some opportunity to reply.

The following amendment to the Chief Judge's Administrative Order of March 1, 1975, might achieve this, while still permitting a reasonable degree of flexibility in its procedures and deliberations. I emphasize that this proposal is mine, and not one made by the 1976 Conference.

Amend Rule 3, as set forth in the Chief Judge's Administrative Order of March 1, 1975, to read as follows:

3. Each Commission shall evaluate every person who files a questionnaire with the Secretary. A Commission may conduct personal interviews or any other investigation deemed necessary. IF A COMMISSION RECEIVES SUBSTANTIAL ADVERSE INFORMATION ABOUT A CANDIDATE, IT SHALL EITHER INFORM THE CANDIDATE OF THAT INFORMATION, AND GIVE HIM AN OPPORTUNITY TO RESPOND TO IT, OR ELSE IGNORE THE ADVERSE INFORMATION IN ITS EVALUATION OF THE CANDIDATE. [Balance of Rule 3 to remain as is at present].

6. An Understanding Should be Reached as to the Form and Content of Bar Association Recommendations. (Paragraphs 7 and 14).

Paragraph 6 (b) of the Executive Order requires each commission to "request recommendations from" the Maryland State Bar Association and "other appropriate bar associations...."

This directive has been met in a variety of ways, depending upon procedures used in the different bar associations. For example, the Maryland State Bar Association and the Bar Association of Baltimore City each has a committee that meets for the purpose of considering candidates and that submits recommendations to the nominating commission. The State Bar Association classifies the person it considers as highly qualified, qualified, unqualified, or insufficient information. The City Bar Association simply submits, in alphabetical order, the names of persons it finds qualified.

Other bar associations hold membership meetings to vote on a list of persons to be recommended. Still others, such as the Montgomery and Prince George's County Bar Associations, utilize written polls. These polls vary in form.

These differing procedures have caused some problems among the commissions, since a recommendation from one bar association may not mean precisely the same thing as a recommendation from another. In addition, there has sometimes been concern about just how determinations are made as between such categories as highly qualified and qualified.

There have been communications between some of the commissions, and some of the bar associations, particularly the Maryland State Bar Association, and procedures have been modified to some degree as a result of these communications.

The Conference rejected the suggestion that it might be useful to ask bar representatives to meet with the commissions to explain in more detail the basis for bar recommendations.

I think it is probably also fair to say that a majority of the conferees believed that unduly strict regulation of bar association procedures would be inappropriate, but that each bar association should be allowed some room for use of procedures with which it felt comfortable. On the other hand, the Conference also concluded that it would be desirable for bar associations to adhere to certain minimum guidelines. Those adopted were as follows:

That any bar group making recommendations to a commission be requested to adhere to the following guidelines:

1. If the recommendation is based on a poll of bar members, the report to the commission should reveal all questions asked in the poll, and the number of responses (affirmative, negative, or non-response) if applicable, to each question. The report should also show the number of people polled and the number of respondents.
2. If an association is involved, [and a vote is taken at an association meeting,] 10a/ the number of persons attending the meeting and the total number of members of the association should be stated. [If a committee handles the function, a] 10a/ quorum should be established, including a "local" quorum in the case of groups, like the Maryland State Bar Association, having both "general" and "local" members. In either case, the votes for each candidate in each category should be listed by "yea", "nay", and "abstention".

10a

Words in brackets apparently inadvertently omitted from Conference guidelines.

It is suggested that neither the Executive Order nor the Chief Judge's Administrative Orders be amended to reflect these positions. While the guidelines could be reflected in some official document, it seems preferable for the present to attempt to work out agreeable procedures by negotiation with the various bar associations, thereby allowing for a degree of flexibility and continuing experimentation looking towards the improvement of bar association recommendations.

7. Names of Applicants Should be Kept Confidential; Commissions Should Not Release Personal Data Questionnaires to Bar Associations or Bar Committees. (Paragraphs 10, 11, and 12).

Two sets of issues are involved here. One relates to the general question of publication of names of all persons who apply to a commission. The other relates to whether the personal data questionnaires submitted by these persons should be turned over by a commission to a bar association, bar committee, or any other body.

a. Confidentiality of Names of Applicants. The commissions have all operated under the theory that the name of every person who applies should be kept confidential, and that only the names of those actually nominated to the Governor should be made public. Interestingly enough, this theory of confidentiality is not expressly supported by language in either the Executive Order or the Chief Judge's Administrative Orders, although it may be implied from Paragraph 6 (d) of the Executive Order and Paragraph 4 of the Administrative Order of March 1, 1975, since both of these direct the commissions to release its report to the public concurrently with submission to the Governor, thereby suggesting that nothing is to be released before then, and that nothing beyond the report to the Governor (the names of the nominees) is to be released at all.

At the Conference, serious questions were raised about the desirability of this confidentiality. It was pointed out, for example, that it would be impossible for members of the public or even members of the bar to make comments

about candidates if they did not know who the candidates were. Thus, the commissions may be deprived of a valuable source of information about applicants.

On the other hand, a majority of the Conference members concluded that publicizing the names of every applicant would tend to inhibit applications by some well-qualified individuals. In view of persistent problems of small numbers of applicants in any event, (at least with respect to many of the commissions) it was thought that nothing should be done that might further reduce these numbers.

While recent newspaper stories involving the filling of judicial vacancies suggest that the practice of confidentiality may be recognized more in the breach than in the observance, the publication of names of candidates in the press does not necessarily mean that commission members have revealed this information. Lists of applicants are routinely sent to a committee of the State Bar Association and to a committee or president of any local bar association in the county where a vacancy exists. Thus, persons having this information available are quite numerous.

The Conference did not recommend termination of the practice of sending names to appropriate bar associations or bar committees, but rather supported the proposal that "present procedures prohibiting general public release of all applicants' names be maintained, with only the names of the actual nominees released to the public." I suggest that this policy now be specifically set forth in the Executive Order, and that it should also be made clear that the names of all applicants may be submitted to an appropriate bar group. At the same time, I propose to take up with the bar groups the problem of leaks. If this cannot be solved effectively, it might be necessary to consider changing the policy to prohibit release of names to bar groups. This would at least narrow the scope of any investigation of the problem of leaks to the Administrative

Office and the commission members themselves.

b. Personal Data Questionnaires. Prior to the Conference, it was a common practice to forward personal data questionnaires to appropriate bar groups. However, the Conference members decided that this should be stopped.

While the Conference recognized that the questionnaires may be useful to a bar association committee, it also felt that the questionnaires sometimes contain potentially embarrassing information about past criminal records and the like, and that it would encourage full disclosure to a commission to make it clear to each applicant that his questionnaire was only for commission use, except that the questionnaires of actual nominees should be forwarded to the Governor for his use.

This policy has actually been placed in effect. At the same time, applicants have been advised that if they wish to do so, they may voluntarily submit copies of their questionnaires to the appropriate bar groups. This has resulted in a working compromise under which the bar groups generally get the information they desire, but this is by decision of the applicant, not by action of the commission. This particular policy is reflected in the form of questionnaire discussed in Paragraph 3, above.

It is suggested that these policies as to confidentiality should be implemented by adding a new Paragraph 7 to the Executive Order, with the present Paragraphs 7, 8, and 9 to be renumbered as Paragraphs 8, 9, and 10. New Paragraph 7 would read as follows:

7. CONFIDENTIALITY.

EXCEPT FOR THE NAMES OF THOSE INDIVIDUALS ACTUALLY NOMINATED TO THE GOVERNOR BY A COMMISSION, THE NAME OF EACH INDIVIDUAL WHO SUBMITS A PERSONAL DATA QUESTIONNAIRE TO A COMMISSION IS CONFIDENTIAL AND MAY NOT BE MADE PUBLIC BY ANYONE. HOWEVER, THE SECRETARY MAY RELEASE NAMES OF THESE INDIVIDUALS TO A BAR ASSOCIATION COMMITTEE OR TO THE PRESIDENT OF A BAR ASSOCIATION, UPON RECEIVING SATISFACTORY ASSURANCES THAT THE COMMITTEE OR PRESIDENT WILL NOT RELEASE OR PERMIT THE RELEASE OF THE NAMES TO THE PUBLIC. A PERSONAL DATA QUESTIONNAIRE SUB-

MITTED TO A COMMISSION IS CONFIDENTIAL AND MAY NOT BE RELEASED BY ANYONE OTHER THAN THE APPLICANT, EXCEPT THAT THE SECRETARY SHALL FORWARD TO THE GOVERNOR THE PERSONAL DATA QUESTIONNAIRES OF THOSE INDIVIDUALS ACTUALLY NOMINATED TO THE GOVERNOR BY A COMMISSION.

8. The Present Provisions Pertaining to Commission Member Disqualification for Relationship with a Candidate Should Not be Changed. (Paragraph 6).

By Administrative Order dated June 19, 1975 (Appendix C of Appendix I) the Chief Judge of the Court of Appeals promulgated Procedural Rule 4A providing as follows:

(a) A commission member may not attend or participate in any way in commission deliberations respecting a judicial appointment for which (1) a near relative of the commission member by blood or marriage, or (2) a law partner, associate, or employee of the commission member is a candidate.

(b) For the purpose of this Rule, "a near relative by blood or marriage" includes a connection by marriage, consanguinity or affinity, within the third degree, counting down from a common ancestor to the more remote.

So far as relatives are concerned, this procedural rule provides the same standard for disqualification of a commission member as does Judicial Ethics Rule 2, Maryland Rule 1231, with respect to disqualification of a judge; see also Article IV, §7 of the Maryland Constitution. The disqualification prohibition with respect to business or professional connections is also similar to guidelines applicable to the judicial branch of government.

This rule has been applied to prohibit a person within the provisions of the Rule from any participation in a commission meeting if that the meeting deals with consideration of candidates and one of the candidates is within the proscribed degree of relationship.

Because of the importance of commission activity and the need for both the appearance and the fact of impartial and unbiased action by commission members, no one seriously quarrels with a need for some rule of this type. However,

the specific rule has been criticized as both too lenient and too strict.

Those who think the present Rule too lenient point out that aside from relatives, there could be various business associations not actually covered by the Rule that could affect the impartiality of a commission member.

Those who think the present Rule too strict argue that a commission member's position is not necessarily affected one way or another by what may be a relatively distant relationship, such as a cousin who is an applicant. They also say that in any event, the most that should be required is the exclusion of the commissioner relative from the voting session, so that the commission may have that commissioner's thinking as to other possible candidates.

Clearly, any disqualification standard of this sort is to some degree arbitrary. Some people have cousins to whom they are very close; others have cousins scarcely known to them. Some have law associates who may occupy a position of respect over and above that of most relatives; others may have law associates for whom they have very little respect at all.

If there is to be at least a minimum appearance of impartiality, a line must be drawn somewhere, and it would seem that the present Rule 4A is a reasonable mechanism for drawing the line, based as it is on the present Canons of Judicial Ethics. Moreover, it does not seem appropriate that a commissioner disqualified from voting under Rule 4A should be allowed to participate at all in the meeting, since the public might assume that his discussion for or against the relative or professional associate might sway the votes of other commissioners.

Apparently, the Conference was of like mind, since it voted to retain Rule 4A "in a form no less stringent than its present form."

On the other hand, the Conference also voted not to extend the strict non-participation provisions of Rule 4A to other situations. Instead, it was the view of the Conference that the Rule should be expanded to require disclosure

of less close and substantial personal, commercial, or political relationships, with further participation following that disclosure to be determined by vote of a majority of the commission members present at the meeting.

This could be accomplished by adding a new subsection to Rule 4A, as follows:

4A.

(C) IF A COMMISSION MEMBER AND A CANDIDATE FOR NOMINATION TO JUDICIAL OFFICE HAVE A PERSONAL, BUSINESS, PROFESSIONAL, OR POLITICAL RELATIONSHIP WHICH IS SUBSTANTIAL, ALTHOUGH NOT AS CLOSE AS A RELATIONSHIP DESCRIBED IN THE PRECEDING SUBSECTIONS OF THIS RULE, THE COMMISSION MEMBER SHALL DISCLOSE THE RELATIONSHIP TO THE OTHER MEMBERS OF THE COMMISSION PRESENT AT A MEETING TO CONSIDER CANDIDATES FOR THE VACANCY. THE DISCLOSING COMMISSIONER'S FURTHER PARTICIPATION IN THAT MEETING SHALL BE DETERMINED BY VOTE OF A MAJORITY OF THE OTHER COMMISSION MEMBERS PRESENT AT THE MEETING.

9. Interviews Should be Encouraged.(Paragraph 15).

Prior to the 1976 Conference, no commission conducted interviews of candidates on a formal basis, although occasionally commission members sought out candidates and had personal talks with them.

When this matter was discussed at the Conference, a few conferees opposed the interview procedure on the ground that it would be of dubious value. Those taking that position apparently felt that little real knowledge of a candidate could be obtained in an interview and that someone who could present himself well might unduly impress commission members as opposed to a person with equally good basic qualifications, but who was less articulate and persuasive.

On the other hand, most of the conferees favored the concept of interviewing as a valuable means of permitting commission members, particularly lay members who might not be personally acquainted with candidates, to obtain some understanding about a candidate beyond the information contained in the personal data questionnaire. Although the Conference did not favor mandatory interviews, it did adopt a recommendation that interviewing be encouraged, "in the discretion of a commission,

as a supplement to other sources of information." The Conference suggested such possible alternatives as full commission interviews or team interviews by subcommittees of a commission.

Since the 1976 Conference, I have encouraged the use of interviews by commissions. I am happy to report that Trial Court Commissions for the First, Fourth, Seventh, and Eighth Circuits, have utilized interviews, as has the Appellate Commission.

The Second and Sixth Circuit Commissions have scarcely met since the 1976 Conference, and in at least some cases have met when there was only a single candidate (as when an incumbent judge was a candidate for reappointment) thus not presenting a pressing need for interviewing.

The Third Circuit Commission at one point voted to proceed with interviewing, but later withdrew from this position because of concerns about interviewing very large numbers of candidates. For reasons not entirely clear to me, the Third Circuit Commission, at least with respect to vacancies in Baltimore County, receives more applications on the average than any other commission. For the District Court, for example, that commission averages over 29 applications per vacancy. That is a formidable number of prospective interviews.

The Fifth Circuit Commission has resisted the interview procedures, although some members of that commission are interested in it.

I think it is fair to say that in every commission that has tried interviewing, the reaction of commission members has been generally favorable and in some cases extremely enthusiastic. The reaction among candidates has been uniformly favorable. My own observation is that interviewing does help commission members judge the qualifications of candidates and tends to produce more informed and meaningful discussion about the candidates. No commission that has begun interviewing has later abandoned the procedure.

Despite the apparent value of interviewing, we have been experimenting with the procedure for less than a year and I think it would be desirable to work with the procedure for a longer period before making it mandatory. But I strongly agree with the Conference view that interviewing should be encouraged. To that end, I suggest the following amendment to Paragraph 3 of the Chief Judge's Administrative Order of March 1, 1975:

3. Each Commission shall evaluate every person who files a questionnaire with the Secretary. A Commission may conduct [personal interviews or] any other investigation deemed necessary. EACH COMMISSION IS ENCOURAGED TO CONDUCT A PERSONAL INTERVIEW OF EVERY CANDIDATE WHO APPLIES TO IT, AT LEAST WITH RESPECT TO THAT CANDIDATE'S INITIAL APPLICATION TO THE COMMISSION. THE INTERVIEWS MAY BE CONDUCTED BY THE FULL COMMISSION OR BY A TEAM OR COMMITTEE OF THE COMMISSION. [Remainder of Paragraph 3 to remain as at present].
10. Commission Screening and Voting Procedures Should be Modified So as to Require a Specified Minimum Number of Commission Members to be Present at a Voting Session; to Prohibit Voting For a Specific Minimum Number of Candidates; and to Prohibit Proxy and Absentee Voting; but the Number of Votes Required to Nominate Should Remain at No Less Than Seven. (Paragraph 5).
 - a. Minumum Number of Commission Members Required to be Present.

Neither the 1974 Executive Order nor the 1977 amendments expressly require the presence of any particular number of commission members at a voting session. Both the 1974 Order and the 1977 amendments do require that nomination be by vote of at least a majority of the full authorized membership of a commission, which in effect means that there must be not less than seven votes to nominate.

On a number of occasions, some of the commissions have been plagued by problems of poor attendance. For example, on at least one occasion a commission met with only seven members present. This meant that there had to be a unanimous vote of those present in order to nominate anybody.

There are obvious drawbacks to sparse attendance. Aside from the practical difficulties of producing a list, the commission as a whole is deprived of the information and insights that might be provided by the absent members.

On the other hand, a requirement that the full membership of a commission be present for a vote would be unrealistic. This would mean that a single member could effectively prevent commission action altogether simply by not attending a meeting. And even putting aside the possibility of deliberate action of this sort, commission members do get sick, take vacations, have conflicting engagements, and occasionally must disqualify themselves under Rule 4A.

The 1976 Conference debated these problems at length. There was general agreement that there should be a requirement for attendance by some number greater than a simple majority at the time of a final vote, although a proposal that at least ten members be present for voting was rejected by a tie vote.

As a compromise, the Conference adopted a recommendation "that no final vote of a commission be taken unless at least nine commission members are present at the time, but that nomination still be permitted by vote of at least a majority of the full authorized membership of the commission."

6. Measures Should be Taken to Help Improve Attendance at Commission Meetings.

As noted above, commission attendance can be a problem, although it should be emphasized that the majority of commission members are diligent and conscientious in performing their duties. Nevertheless, there is one member of the Fifth Circuit Commission who has never attended a single meeting; one member of the Eighth Circuit Commission who rarely attends; and a member of the Appellate Commission who has missed two out of the last three meetings. When this kind of situation is added to the possibility of sickness and disqualification, problems can arise

not only with respect to producing a minimum seven votes for an adequate list, but also of meeting a minimum quorum requirement, such as proposed in the preceding paragraph.

Some sort of exhortation from the Acting Governor might help encourage some commission members by reminding them of the importance of their task and of the need for the presence of each commission member at every meeting unless disqualified. However, it also would seem desirable that there be some provision for elimination from membership of those commission members who virtually never attend meetings. The Conference discussed Article 41, §4 of the Code, which probably does not apply to commissions and in any event would not apply to lawyer members who are not appointed by the Governor. But the Conference made no recommendation in this regard.

It is my recommendation that the Executive Order be amended to provide that if a commission meets at least twice in any calendar year, a commission member who fails to attend at least half of the meetings in that year is automatically removed from membership unless he has been disqualified under Rule 4A.

c. Voting for a Specified Minimum Number of Candidates.

Prior to the 1974 Executive Order, it was a common practice on some commissions to require members to vote for at least a certain minimum number of names. The minimum was normally set with reference to the minimum specified by Paragraph 4(e) of the Executive Order.

The result of this procedure was to produce lists that complied with the minimum requirements of the Executive Order. But the effect also was to force commission members, on some occasions, to vote for persons they did not conscientiously believe to be fully qualified, because they had to vote for at least that minimum number of names in order to have their ballots counted.

The Conference adopted a recommendation "that members not be required to vote for any specified number of candidates" and that practice has now become

general in all commissions.

This change in procedure may be one cause of some of the rather short lists that have been submitted, although lack of well-qualified applicants may be a more fundamental cause. However, it is believed to be sound policy that no commission member should be forced to vote for someone he does not truly believe to be qualified, merely in order to put a specified number of names on a list. Accordingly, it is recommended that the Chief Judge's procedural rules be amended to reflect the current practice.

d. Neither Proxy nor Absentee Voting Should be Permitted.

A proxy voting procedure is one whereby a commission member who cannot attend a meeting authorizes another commission member to cast a ballot for him, either for named candidates or simply in the discretion of the second commission member. An absentee voting procedure is one whereby a commission member who expects not to be present submits in advance a sealed ballot naming the candidates for whom he intends to vote.

Proxy voting would appear to be unlawful under the 1974 Executive Order, since that Order clearly requires a secret vote. By definition, a proxy vote cannot be secret, since the proxy is aware of the vote of the other member whose proxy he holds. The Conference voted to eliminate proxy voting.

Absentee voting does not quite so clearly violate the secrecy provisions, although practical violations of secrecy are easy to commit when the absentee ballot is being opened. However, except for the Appellate Commission, every nominating commission that has considered the issue of absentee voting since the 1976 Conference has rejected the concept.

There are several difficulties with absentee voting. One of them is that the absent member is deprived of the benefit of discussion by the other commission members as well as deprived of the advantages given by interview of candidates, either or both of which might change his vote. Moreover, some commissions who receive relatively large lists of candidates screen out some as obviously not

qualified, by informal screening procedures. It is possible that one or more of the persons on the absent member's ballot might be so screened out, thus causing the absent member in effect to waste his vote entirely.

It is recommended that the procedural rules be amended to eliminate both proxy and absentee voting. If provisions requiring attendance by not less than nine members at a voting session are adopted, and faithfully adhered to, the elimination of proxy and absentee ballots should not produce undue difficulties.

The recommendations contained in this Paragraph 10 could be accomplished through the following amendments:

a. Presence of Minimum Number of Commission Members.

Amend Paragraph 6(c) of the Executive Order to read as follows:

6.

(c) The Commission shall evaluate each proposed nominee. It shall select and nominate to the Governor the names of persons it finds to be legally and most fully professionally qualified. NOT LESS THAN NINE COMMISSION MEMBERS SHALL BE PRESENT AT THE VOTING SESSION. No person's name may be submitted unless he has been found legally and most professionally qualified by a vote of a majority of the entire authorized membership of the Commission, taken by secret ballot.

Amend Rule 3 of the Administrative Order of March 1, 1975 to read as follows:

3. Each Commission shall evaluate every person who files a questionnaire with the Secretary. A Commission may conduct personal interviews or any other investigation deemed necessary. It shall select and nominate to the Governor the names of the persons it finds to be legally and most fully professionally qualified. NOT LESS THAN NINE COMMISSION MEMBERS SHALL BE PRESENT AT THE VOTING SESSION. No person's name may be submitted unless he has been found legally and most professionally qualified by a vote of a majority of the entire authorized membership of the Commission, taken by secret ballot.

b. Removal of Members who Fail to Attend Meetings.

Amend Paragraph 3(b) and 4(b) of the Executive Order to read as follows:

The terms of the members of the [Commission]^{11/} [Commissions]^{12/} are coextensive with the term of the Governor and until their successors are duly chosen. HOWEVER, IF [THE] 11/ [A] 12/ COMMISSION MEETS NOT LESS THAN TWICE IN ANY CALENDAR YEAR AND IF ANY MEMBER OF THE COMMISSION WHO IS NOT DISQUALIFIED FROM PARTICIPATION FAILS TO ATTEND AT LEAST 50 PERCENT OF THE COMMISSION MEETINGS HELD IN THAT CALENDAR YEAR, THE TERM OF THAT COMMISSION MEMBER IS AUTOMATICALLY TERMINATED AT THE END OF THE CALENDAR YEAR AND ANOTHER MEMBER SHALL PROMPTLY BE SELECTED TO REPLACE HIM.

c. No Voting for a Specified Minimum and

d. Prohibition of Proxy and Absentee Voting.

Amend Rule 3 of the Administrative Order of March 1, 1975 to read as follows:

Each Commission shall evaluate every person who files a questionnaire with the Secretary. A Commission may conduct personal interviews or any other investigation deemed necessary. It shall select and nominate to the Governor the names of the persons it finds to be legally and most fully professionally qualified. IN DOING SO, EACH COMMISSION MEMBER SHALL VOTE ONLY FOR THOSE PERSONS HE CONSCIENTIOUSLY BELIEVES TO BE LEGALLY AND MOST FULLY PROFESSIONALLY QUALIFIED. VOTING BY PROXY OR BY ABSENTEE BALLOT IS NOT PERMITTED. No person's name may be submitted unless he has been found legally and most fully professionally qualified by a vote of a majority of the entire authorized membership of the Commission, taken by secret ballot.

11. There Should be No Change in the Minimum Number of Names to be Included On a List. (Paragraph 4).

At the time of the 1976 Conference, the 1974 Executive Order required the Appellate Commission to submit a list of not less than five names for each vacancy. The Trial Courts Commissions were required to submit minimum numbers varying from five to two, depending upon the lawyer population of the jurisdiction in which the vacancy existed. However, Paragraph 5(a)(2) in particular had the effect of permitting any Commission to submit as few as two names without seeking the prior permission of the Governor.

11/ Paragraph 3(b) (Appellate Commission)

12/ Paragraph 4(b) (Trial Court Commissions)

Since the effective date of the 1974 Order, there have been 55 lists of nominees submitted, excluding situations involving the expiration of the term of a judge, in which a small number of applicants is normal and in which the Governor usually gives permission to submit but a single name if the Commission so desires. In 14 of these situations, a Commission has submitted two or fewer names; this has generally occurred in the smaller counties with only a few members of the Bar and as to which two names would be acceptable in any event. However, it must be observed that the phenomenon has also occurred with respect to large counties such as Prince George's, with respect to Baltimore City, and with respect to appellate court vacancies.

There is a tension here between a Governor's natural desire not to have his hands bound by a nominating commission and a nominating commission's natural desire to submit only the names of the people it deems best qualified. At the 1976 Conference, it was proposed that the normal minimum be reduced to three. However, the Conference rejected this proposal on the grounds that it was too restrictive to be adopted as a general rule.

The Conference's recommendation was that the provisions as to minimum number of names remain unchanged. Of course, since that time the Acting Governor has promulgated his Executive Order of October 4, 1977 and some changes have been made in this regard, in general producing requirements for greater minimums with respect to the appellate courts and the larger counties in which trial court vacancies exist. It would appear that no further changes should be proposed at this time. Instead, we should await the actual effects of the 1977 Executive Order and take up on a case-by-case basis those situations in which a commission feels it cannot conscientiously recommend the minimum number of names and thus must seek the Governor's approval for a short list.

C. Existing Election Procedures for Judges at the Supreme Bench and Circuit Court Levels Should be Eliminated.

When the District Court was created in 1971, following a Constitutional amendment ratified in 1970, the General Assembly and the voters wisely approved provisions eliminating its judges from the elective process. A candidate for judgeship at this level, after nomination by a commission, is appointed by the Governor and confirmed by the Senate.

In 1976, the provisions with respect to judges of the appellate courts were modified as well. Presently, a candidate for an appellate court judgeship, after nomination by a nominating commission, is appointed by the Governor, confirmed by the Senate, and then must stand for retention in office in a non-competitive election in which the voters cast ballots either for or against the retention of the individual judge.

Thus, it is only judges of the Supreme Bench of Baltimore City and of the circuit courts of the several counties who must face the possibility of contested primary and general elections.

At several points in this paper, I have commented on problems relating to small numbers of candidates and short lists of nominees submitted to the appointing authority. I have suggested a number of possible reasons for these phenomena. I am convinced that the principal reason, or at least the most important single reason, has to do with the election problem at the Supreme Bench/circuit court level.

This is not easy to demonstrate statistically. In some of the larger jurisdictions, such as Anne Arundel, Montgomery, and Prince George's Counties, it is difficult to detect a clear pattern distinguishing numbers of applicants for District Court vacancies from numbers of applicants for circuit court vacancies. In at least Montgomery and Prince George's, the number of applicants for any vacancies tend to be relatively small in comparison to the lawyer

populations, suggesting that economic factors as well as political factors may be working.

A somewhat different pattern can be discerned in Baltimore City and Baltimore County. Because the pay of judges at the circuit court level is 15 percent greater than that of District Court judges, and because in the eyes of many lawyers, a circuit court judgeship is conceived of as more prestigious than a District Court judgeship (whether rightly or wrongly) one might assume that applicants for circuit court level appointments would at least equal those for District Court appointments. But in the two jurisdictions just mentioned, exactly the opposite is the case.

In Baltimore County, since the effective date of the 1974 Executive Order and excluding reappointment situations, the average number of applicants for each District Court vacancy has been 29.2 while the average number of applicants for each circuit court vacancy has been only 17.

In Baltimore City, over the same period of time and with the same exclusion, the average number of applicants for each District Court vacancy has been 17 and the average number of applicants for each Supreme Bench vacancy has been only 9.

Both of these jurisdictions contain large lawyer populations, that of Baltimore City probably exceeding 2,000. Something is radically wrong when an average of just under 9 people apply for a vacancy on that City's trial court of general jurisdiction. It is not hard to understand why commissions are virtually forced to submit short lists when the total number of applicants is so small.

As I have stated earlier, a number of explanations may be advanced for the situation. These include problems relating to compensation, generally lowered prestige of the judiciary, concerns regarding restricted activities permitted judges, reservations regarding alleged advance political decisions in judicial selection, and several others. But I am convinced that a major factor is the concern about the election process for circuit court judges. The 1976 Conference shared this concern. Without dissent, it adopted the following Resolution:

We urge the General Assembly to enact a bill to submit a Constitutional amendment to the voters of Maryland applicable to the circuit courts of the counties and the Supreme Bench of Baltimore City to provide for the selection, appointment, and retention of the judges of these courts in the same manner as now provided for the judges of the appellate courts of this State.

Since the Conference, the Eighth Circuit Commission has also expressed special concern about this problem and has itself taken a similar position.

Obviously, the implementation of this recommendation cannot be achieved by amendments to the Executive Order, the Court of Appeals Selection Regulations, or the Procedural Rules. A Constitutional amendment is needed. Perhaps 1978 is not the most advantageous time to put this proposal to the General Assembly. The 1979 session might be more advantageous, even though a Constitutional amendment adopted at that session could not be voted upon by the people until 1980.

Such a Constitutional amendment might well include constitutional provisions providing for the nominating commission process which has in general worked well. Here again, postponement of legislative action until 1979 might be desirable, since it would give some further period for working with any changes adopted pursuant to the recommendations contained in this paper before moving to embody the nominating commission concept in the Constitution, where it eventually should be placed.

Unfinished Business.

Although the members of the December 1976 Nominating Commission Conference worked long and hard, they were unable to complete the full agenda presented to them. Some of these deserve mention here so that this Report will be as complete as possible.

A. Dearth of Applicants.

Except for the Resolution stated above, relating to the election process at the circuit court level, the Conference itself did not have time to discuss

the problem of lack of applicants. I have noted this problem on several occasions and suggested some approaches to it.

I should like to add to the prior discussion only some reinforcing data extracted from the 1975 Questionnaire circulated to all nominating commission members. The respondents to that questionnaire selected as first choice among factors inhibiting people from applying for judgeships inadequate compensation. 26 lay members and 22 lawyer members took this position. The second highest rating for inhibiting factors was unwillingness of potential applicants to face election (23 lay people and 17 lawyers). As one lawyer respondent put it, "the combination of [salary considerations and election requirements] are almost insuperable" obstacles to many potentially well-qualified applicants. But, as already noted, there is nothing an Executive Order can do to remedy these problems.

B. Maintenance of Files.

Particularly for some lay members, the problem of retaining documents received during the nominating commission process can be difficult. It is sometimes desirable to retain personal data questionnaires for a period of time because there is a tendency among some to re-apply to the same commission on a number of occasions. On some commissions, a procedure was developed whereby a person so reapplying would not have to file a completely new personal data questionnaire, but could simply reactivate his prior questionnaire by a letter. Of course, the effectiveness of this procedure depends upon commission members having copies of the prior questionnaire and since reactivation might extend over a period of years, this could produce storage problems for some.

To strike a reasonable balance, it is suggested that Rule 2 of the Administrative Order of March 1, 1975 be amended as follows:

Personal data questionnaires for any applicant for appointment to the judicial vacancy shall be made available through the Chairman of the Commission or any Commission member, or by the Secretary. Every completed questionnaire shall be filed with the Secretary on or before a date specified in the public notice

advising of the vacancy. The Secretary shall distribute to each Commission member a copy of every questionnaire filed with him. AN INDIVIDUAL WHO REAPPLIES TO A COMMISSION WITH WHICH HE HAS FILED A PERSONAL DATA QUESTIONNAIRE WITHIN TWELVE CALENDAR MONTHS IMMEDIATELY PRECEDING THE REAPPLICATION NEED NOT FILE A COMPLETE NEW QUESTIONNAIRE, BUT MAY SUBMIT TO THE SECRETARY A LETTER STATING THAT HE IS REAPPLYING AND SETTING FORTH ANY CHANGES THAT HAVE OCCURRED SINCE THE SUBMISSION OF HIS QUESTIONNAIRE. THE SECRETARY SHALL DISTRIBUTE THESE LETTERS TO COMMISSION MEMBERS IN THE SAME MANNER AS QUESTIONNAIRES. Distribution shall be completed not less than three days prior to the meeting date.

C. Time-lag From Filing Deadline to Meeting.

Occasionally, concern has been expressed about what some believe to be too short a time from the deadline for filing personal data questionnaires to the commission meeting date. Rule 2 of the Chief Judge's Administrative Order of March 1, 1975 in effect requires at least a three day delay, but this period of time is unduly short to allow for bar association recommendations, in many cases. As a practical matter, at least a week and usually a longer period elapses between the filing deadline and the actual commission meeting date.

Some respondents to the 1975 Questionnaire suggested that 7 to 10 working days should be required between the filing deadline and the commission meeting date. This would mean 9 to 15 calendar days, and the latter time period at least could work to delay unnecessarily the operations of the nominating commission process.

Although the Conference did not address this problem, it seems to me that a reasonable compromise would be to require a delay of at least 7 calendar days from the filing deadline to the commission meeting. This would be a minimum, and necessary longer delays could be worked out in specific cases as needed and appropriate.

This recommendation could be accomplished by adding to Rule 2 of the

Administrative Order (quoted above) the following sentence:

A COMMISSION MEETING MAY NOT BE HELD SOONER THAN SEVEN CLEAR
CALENDAR DAYS FOLLOWING THE DATE SET AS THE DEADLINE FOR FILING
PERSONAL DATA QUESTIONNAIRES.

D. The Standard of Legally and Professionally Most Fully Qualified.

Some commission members had voiced concern about ambiguities in the requirement that no person be nominated unless found to be "legally and professionally most fully qualified". However, no respondent to the 1975 Questionnaire had any concrete proposal for a better standard. Most respondents seemed to accept the notion that this standard means that commissions are supposed to nominate people who are more than merely "qualified" for the particular office in question.

Once again, the Conference did not discuss this problem, but I do not see it as a major difficulty and would suggest no change in this regard.

E. Should the Governor be Required to Make an Appointment Within a Limited Time?

Under the 1970 Executive Orders, commissions were activated by direction of the Governor. The procedure then frequently involved a considerable delay between the occurrence of a vacancy and the activation of a commission, simply because the Governor took no steps to direct the commission to act.

One of the purposes of the 1974 Order was to correct this situation. To that end, the 1974 Order provided that a commission would be activated by the Secretary.

This change has had its desired effect. With respect to 63 judicial vacancies occurring since the effective date of the 1974 Executive Order, in at least 36, not only has the commission been activated prior to the vacancy date, but it has actually had a list in the hands of the Governor prior to that date. Given the fact that some vacancies are not foreseeable, such as those caused by death, unannounced retirement, or appointment to another judicial office, this is a respectable record.

But the overall effect intended to be achieved, that of keeping judicial vacancies to an absolute minimum to assure the smooth operation of the judicial system, was not always achieved because under the previous administration there were delays, sometimes of several months, between the submission of the list of nominees and the actual appointment. This produced the same end result that failure to activate the commissions had - long-standing judicial vacancies.

For example, with reference only to vacancies that both occurred and were filled during fiscal 1976, the average delay between submission of names to the Governor and announcement of the appointment was about 2.6 months, with the longest delay being 5.3 months. In over a quarter of those appointments, the delay was 4 months or longer.

The Conference members did not have an opportunity to consider this problem, and it must be stated that in recent months, the problem has ceased to exist. That does not mean that it could not arise at some time in the future, but here again the solution, if one is required, would seem to be found in a Constitutional amendment which would require the Governor to appoint within some specified period of time following submission of the list, and which would shift the appointing power to some other authority upon the Governor's failure to act within the specified time.

It would seem that this is one of the matters that should be addressed in the future if it is decided to support a Constitutional amendment to establish the nominating commission system.

COMPOSITE DRAFT SHOWING ALL PROPOSED AMENDMENTS
EXECUTIVE ORDER

iv

01.01.1977.08

JUDICIAL NOMINATING COMMISSIONS

WHEREAS,

By Executive Order 01.01.1974.23, dated December 18, 1974, Governor Marvin Mandel rescinded two previous Executive Orders and created the Appellate Judicial Nominating Commission and the Trial Court Judicial Nominating Commissions for the purpose of recommending to the Governor the names of persons for appointment to the appellate courts and trial courts of Maryland, and provided for the composition and general functions and procedures of the Commissions; and

WHEREAS,

This Executive Order requires that a list containing a certain minimum and maximum number of names or nominees be submitted to the Governor by the appropriate Nominating Commission for each vacancy which occurs on an Appellate Court or a Trial Court, from which list the Governor voluntarily has bound himself to select a person to fill the judicial office; and

WHEREAS,

The Order further authorizes a Nominating Commission to recommend fewer than the minimum number of names under certain conditions, including the situation in which a Commission concludes that there are less than the minimum number of persons willing to accept appointment who are legally and fully professionally

qualified; and

WHEREAS,

Although the Order, in establishing the required minimum number of names to be submitted for a particular judicial vacancy, takes into account such factors as the nature of the judicial office to be filled and the number of lawyers in the County, the Order authorizes each Commission to submit in some instances as few as two names for a judicial vacancy, regardless of the nature of the judicial office to be filled or the number of lawyers in the County represented by the office, and without the prior approval of the Governor; and

WHEREAS,

This exception to the general rule of a required minimum number of names may result in situations which indirectly limit rather than aid the Governor in exercising the Constitutional duty reposed in him to appoint duly qualified persons to the courts of Maryland; and

WHEREAS,

Although the system created by this Executive Order has worked well and has materially assisted in assuring the appointment of qualified persons in the Judiciary of Maryland, I believe that certain refinements to the Order will improve further the reforms established by the previous Executive Orders, and, therefore, better assist in achieving the goals stated in the Executive Orders of July 6, and July 17, 1970;

NOW, THEREFORE, I, BLAIR LEE LLL, ACTING GOVERNOR OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY ARTICLE II, SECTIONS 6(B) AND 24, AND ARTICLE IV, SECTIONS 5, 5A; AND 41D OF THE CONSTITUTION OF MARYLAND, AND BY ARTICLE 41, SECTIONS 15C and 15CA OF THE ANNOTATED CODE OF MARYLAND, HEREBY PROMULGATE THE FOLLOWING ORDER AMENDING EXECUTIVE ORDER 01.01.1974.23:

1. Extension of Terms of Present Commissioners

The terms of the members of the Commission on Appellate Judicial Selection and the eight Commissions on Trial Court Judicial Selection are extended until their successors are duly chosen.

2. Rescission on Previous Executive Order

The Executive Orders issued by me dated July 6, 1970, July 17, 1970, and April 21, 1971, relating to the Commission on Appellate Judicial Selection and the Commissions on Trial Court Judicial Selection are rescinded.

3. Appellate Judicial Nominating Commission

(a) Creation and Composition

The Appellate Judicial Nominating Commission is created as part of the Executive Department. It consists of 13 persons and a non-voting Secretary, chosen as follows:

- (1) One person, who shall be the Chairman, shall be appointed by the Governor. The Chairman may but need not be a lawyer, and shall be selected from the State at

large. [He may not be an elected State official or a full-time employee of the State.] HE MAY NOT HOLD AN OFFICE OF PROFIT OR TRUST UNDER THE CONSTITUTION OR LAWS OF THIS STATE, AN OFFICE IN A POLITICAL PARTY, OR BE A FULL-TIME EMPLOYEE OF THE STATE.

(2) One person shall be appointed by the Governor from each of the Appellate Judicial Circuits, and shall be a resident and registered voter in the circuit from which he is appointed. These persons may not be lawyers, [elected State officials, or full-time employees of the State] HOLD AN OFFICE OF PROFIT OR TRUST UNDER THE CONSTITUTION OR LAWS OF THIS STATE, AN OFFICE IN A POLITICAL PARTY, OR BE FULL-TIME EMPLOYEES OF THE STATE.

(3) One person, who shall be a member of the Maryland Bar, shall be elected by the members of the Maryland Bar in each of the six Appellate Judicial Circuits. THESE PERSONS MAY NOT HOLD AN OFFICE OR PROFIT OR TRUST UNDER THE CONSTITUTION OR LAWS OF THIS STATE, AN OFFICE IN A POLITICAL PARTY, OR BE FULL-TIME EMPLOYEES OF THE STATE. The elections in each circuit shall be conducted by the State Court Administrator pursuant to rules promulgated by the Court of Appeals.

(4) THE COMMISSION SHALL ELECT A VICE-CHAIRMAN FROM AMONG ITS MEMBERS, BY VOTE OF A MAJORITY OF ITS FULL AUTHORIZED MEMBERSHIP. THE VICE-CHAIRMAN MAY PERFORM ANY OF THE DUTIES OF THE CHAIRMAN DURING THE LATTER'S ABSENCE, UNAVAILABILITY, OR INABILITY TO ACT.

[(4)](5) The State Court Administrator is, ex officio, the non-voting Secretary of the Commission.

(b) Terms

The terms of the members of the Commission [are coextensive with the term of the Governor] EXTEND TO THE DATE OF QUALIFICATION OF THE GOVERNOR ELECTED AT EACH QUADRIENNIAL ELECTION, and until their successors are duly chosen. HOWEVER, IF THE COMMISSION MEETS NOT LESS THAN TWICE IN ANY CALENDAR YEAR, AND IF ANY MEMBER OF THE COMMISSION WHO IS NOT DISQUALIFIED FROM PARTICIPATION FAILS TO ATTEND AT LEAST 50 PERCENT OF THE COMMISSION MEETINGS HELD IN THAT CALENDAR YEAR, THE SERVICE OF THAT COMMISSION MEMBER IS AUTOMATICALLY TERMINATED AT THE END OF THE CALENDAR YEAR AND ANOTHER MEMBER SHALL PROMPTLY BE SELECTED TO REPLACE HIM.

(c) Vacancies

If a vacancy occurs on the Commission by reason of the death, resignation, REMOVAL, or disqualification of a member appointed by the Governor, his successor shall be appointed by the

Governor in accordance with Paragraph 3(a). If the vacancy occurs by reason of the death, resignation, ^{REMOVAL,} or disqualification of a member elected by the members of the Bar, his successor shall be selected pursuant to rules promulgated by the Court of Appeals.

(d) Ineligibility for Judicial Appointment

The Governor shall not appoint a member of the Commission to a vacancy on an Appellate Court during the term for which the member was chosen.

(e) Number of Recommendations

The Commission shall submit to the Governor a list of not less than five nor more than seven nominees for each vacancy on an Appellate Court.

4. Trial Court Judicial Nominating Commissions

(a) Creation and Composition

A Trial Court Judicial Nominating Commission is created as part of the Executive Department for each of the eight judicial circuits of the State. They each consist of 13 persons, and a non-voting Secretary, chosen as follows:

(1) One person, who shall be the Chairman, shall be appointed by the Governor. The Chairman may but need not be a lawyer, but shall be a resident and registered voter of the Judicial Circuit. HE MAY NOT HOLD AN OFFICE OF PROFIT OR TRUST UNDER THE CONSTITUTION OR LAWS OF THIS STATE, AN OFFICE IN

A POLITICAL PARY, OR BE A FULL-TIME EMPLOYEE OF THE STATE.

(2) Six persons shall be appointed by the Governor from among the residents and registered voters of the Judicial Circuit. These persons may not be lawyers, [elected State officials, or full-time employees of the State] HOLD AN OFFICE OF PROFIT OR TRUST UNDER THE CONSTITUTION OR LAWS OF THIS STATE, AN OFFICE IN A POLITICAL PARTY, OR BE FULL-TIME EMPLOYEES OF THE STATE. If the Judicial Circuit contains more than one county, at least one person shall be appointed from each county in the Circuit, and shall be a resident and registered voter of such county.

(3) Six persons shall be members of the Maryland Bar who [reside and are registered voters in the Circuit] ARE REGISTERED TO VOTE IN STATE ELECTIONS AND WHO MAINTAIN THEIR PRINCIPAL OFFICES FOR THE PRACTICE OF LAW IN THE CIRCUIT. They shall be elected by the members of the Maryland Bar who [reside and are registered voters in the Circuit] ARE REGISTERED TO VOTE IN STATE ELECTIONS AND WHO MAINTAIN THEIR PRINCIPAL OFFICES FOR THE PRACTICE OF LAW IN THE CIRCUIT. THESE PERSONS MAY NOT HOLD AN OFFICE OF PROFIT OR TRUST UNDER THE CONSTITUTION OR LAWS OF THIS

STATE, AN OFFICE IN A POLITICAL PARTY, OR BE FULL-TIME EMPLOYEES OF THE STATE. The election shall be conducted by the State Court Administrator pursuant to rules promulgated by the Court of Appeals.

(4) EACH COMMISSION SHALL ELECT A VICE-CHAIRMAN FROM AMONG ITS MEMBERS, BY A VOTE OF A MAJORITY OF ITS FULL AUTHORIZED MEMBERSHIP. THE VICE-CHAIRMAN MAY PERFORM ANY OF THE DUTIES OF THE CHAIRMAN DURING THE LATTER'S ABSENCE, UNAVAILABILITY, OR INABILITY TO ACT.

[(4)] (5) The State Court Administrator is, ex officio, the non-voting Secretary of each Commission.

(b) Terms

The terms of the members of the Commission [are coextensive with the term of the Governor] EXTEND TO THE DATE OF QUALIFICATION OF THE GOVERNOR ELECTED AT EACH QUADRIENNIAL ELECTION, and until their successors are duly chosen. HOWEVER, IF A COMMISSION MEETS NOT LESS THAN TWICE IN ANY CALENDAR YEAR, AND IF ANY MEMBER OF THE COMMISSION WHO IS NOT DISQUALIFIED FROM PARTICIPATION FAILS TO ATTEND AT LEAST 50 PERCENT OF THE COMMISSION MEETINGS HELD IN THAT CALENDAR YEAR, THE SERVICE OF THAT COMMISSION MEMBER IS AUTOMATICALLY TERMINATED AT THE END OF THE

CALENDAR YEAR AND ANOTHER MEMBER SHALL PROMPTLY BE SELECTED TO REPLACE HIM.

(c) Vacancies

If a vacancy occurs on a Commission by reason of death, resignation, REMOVAL, or disqualification of a member appointed by the Governor, his successor shall be appointed by the Governor in accordance with Paragraph 4(a). If the vacancy occurs by reason of death, REMOVAL, resignation, or disqualification of a member elected by the members of the Bar, his successor shall be selected pursuant to rules promulgated by the Court of Appeals.

(d) Ineligibility for Judicial Appointment

The Governor shall not appoint a member of these Commissions to a vacancy on a Trial Court during the term for which they were chosen.

(e) Number of Recommendations

The Commission shall submit to the Governor a list of not more than seven names for each judicial vacancy on a Trial Court within its Circuit. The Commission shall submit a minimum number of names in accordance with the following table:

<u>Number of Lawyers Contributing to Client's Security Trust Fund in the County</u>	<u>Minimum Number of Names Per Vacancy</u>
(1) More than 750	5
(2) 201-750	4
(3) 31-200	3
(4) 30 or less	2

5. Recommending Less than Minimum Number

(a) A Commission may recommend fewer than the minimum number of nominees required by Paragraphs 3(e) and 4(e) under the following conditions:

(1) If multiple vacancies exist for which recommendations must be made, a Commission may submit a list containing the required minimum number of nominees for one vacancy plus two additional names for each vacancy in excess of one; or

(2) If it concludes that there are less than the minimum required number of persons willing to accept appointment who are legally and professionally qualified. However, a Commission shall obtain the prior approval of the Governor in order to recommend less than four names under Paragraph 3(e), or less than three names under Paragraph 4(e) (1) or (2), or less than two names under Paragraph 4(e) (3) or (4).

(b) If any person recommended for appointment notifies the Governor that he is unwilling to accept appointment, or if he is disqualified, or is otherwise unavailable for appointment, a Commission may, upon request of the Governor, submit an additional nominee if needed to increase the list to the prescribed minimum number of names.

(c) If the position to be filled is then held by an incumbent judge who is eligible for and desires reappointment, the Commission, with the prior approval of the Governor, may submit a list with less than the prescribed minimum number of names.

6. Commission Procedures

(a) Each Commission shall operate under procedures specified in rules adopted by the Chief Judge of the Court of Appeals consistent with this Executive Order.

(b) Upon notification by the Secretary that a vacancy exists or is about to occur in a judicial office for which a Commission is to make nominations, the Commission shall seek and review applications of proposed nominees for the judicial office. APPLICATION SHALL BE MADE ON THE FORM PRESCRIBED BY THE SECRETARY. The Commission shall notify the Maryland State Bar Association, Inc. and other appropriate bar associations of the vacancy, and shall request recommendations from them. The Commission may also seek a recommendation from interested citizens and from among its own members.

(c) The Commission shall evaluate each proposed nominee. IN THE COURSE OF ITS EVALUATION, A COMMISSION MAY SEEK INFORMATION BEYOND THAT CONTAINED IN THE PERSONAL DATA QUESTIONNAIRE SUBMITTED TO IT. IT MAY OBTAIN PERTINENT INFOR-

MATION FROM KNOWLEDGEABLE PERSONS KNOWN TO COMMISSION MEMBERS, THE ATTORNEY GRIEVANCE COMMISSION, JUDGES, PERSONAL REFERENCES GIVEN BY THE CANDIDATE, CRIMINAL JUSTICE AGENCIES, OR OTHER SOURCES. A CRIMINAL JUSTICE AGENCY, INCLUDING THE CENTRAL REPOSITORY, IS AUTHORIZED TO RELEASE CRIMINAL HISTORY RECORD INFORMATION, INCLUDING CONVICTION AND NON-CONVICTION DATA, TO A COMMISSION, UPON THE REQUEST OF THE COMMISSION CHAIRMAN, FOR THE PURPOSE OF EVALUATING A CANDIDATE. It shall select and nominate to the Governor the names of persons it finds to be legally and most fully professionally qualified. NOT LESS THAN NINE COMMISSION MEMBERS SHALL BE PRESENT AT THE VOTING SESSION. No person's name may be submitted unless he has been found legally and most professionally qualified by a vote of a majority of the entire authorized membership of the Commission, taken by secret ballot.

(d) The Commission shall report to the Governor, in writing, the names of the persons it nominates as legally and fully professionally qualified to fill a vacancy. The names of persons shall be listed in alphabetical order. The report shall be submitted within 70 days after notification by the Commission's Secretary that a vacancy exists or is about to occur. The Commission shall release its report to the public concurrently with submission of the report to the Governor.

(e) Each Commission shall distribute informational and educational materials concerning judicial vacancies and the functions of the Commission, in order to inform the public of the Judicial selection process of the State.

7. CONFIDENTIALITY

EXCEPT FOR THE NAMES OF THOSE INDIVIDUALS ACTUALLY NOMINATED TO THE GOVERNOR BY A COMMISSION, THE NAME OF EACH INDIVIDUAL WHO SUBMITS A PERSONAL DATA QUESTIONNAIRE TO A COMMISSION IS CONFIDENTIAL AND MAY NOT BE MADE PUBLIC BY ANYONE. HOWEVER, THE SECRETARY MAY RELEASE NAMES OF THESE INDIVIDUALS TO A BAR ASSOCIATION COMMITTEE OR TO THE PRESIDENT OF A BAR ASSOCIATION, UPON RECEIVING SATISFACTORY ASSURANCES THAT THE COMMITTEE OR PRESIDENT WILL NOT RELEASE OR PERMIT THE RELEASE OF THE NAMES TO THE PUBLIC. A PERSONAL DATA QUESTIONNAIRE SUBMITTED TO A COMMISSION IS CONFIDENTIAL AND MAY NOT BE RELEASED BY ANYONE OTHER THAN THE APPLICANT, EXCEPT THAT THE SECRETARY SHALL FORWARD TO THE GOVERNOR THE PERSONAL DATA QUESTIONNAIRES OF THOSE INDIVIDUALS ACTUALLY NOMINATED TO THE GOVERNOR BY A COMMISSION.

[7](8) Appointment From List

The Governor shall fill a judicial vacancy by selecting a person from the list submitted by the appropriate Commission.

[8] (9) Definitions

As used in this Executive Order:

(a) "Appellate Court" means the Court of Appeals of Maryland and the Court of Special Appeals of Maryland;

(b) "Trial Court" means the District Court of Maryland, the Circuit Court of a County, and a court of the Supreme Bench of Baltimore.

[9] (10) Effective Date

This Order is effective October 4, 1977.

[10] (11) Applicability

The Amendments made by this Order to Paragraph 5(a)(2) are applicable to any judicial vacancy which exists on October 4, 1977 or occurs thereafter, and for which a Commission has not submitted a report and nomination to the Governor.

GIVEN Under My Hand and the
Great Seal of the State of
Maryland, in the City of
Annapolis, this 4th day of
October, 1977.

COURT OF APPEALS OF MARYLAND

APPELLATE AND TRIAL COURT JUDICIAL
SELECTION REGULATIONS

ORDER

WHEREAS on December 18, 1974, His Excellency, Marvin Mandel, Governor of Maryland, by Executive Order, continued the existence of the Governor's Commission on Appellate Judicial Selection and the eight Governor's Commissions on Trial Court Judicial Selection, at the same time restructuring the Commissions in certain respects, and extending the terms of their members until the selection of their successors; and

WHEREAS in the 1974 Executive Order, the Governor directed that six members of each Commission should be lawyers, elected by fellow lawyers of the State in an election "conducted by the State Court Administrator pursuant to rules promulgated by the Court of Appeals"; and

WHEREAS the Court of Appeals of Maryland, desiring to accede to the proposals of the Governor, has considered the regulations it adopted on October 19, 1970, to govern similar elections, as modified by certain suggestions submitted by the State Court Administrator, which modified regulations read as follows:

I

Definitions

Administrator means the State Court Administrator.

Administrative Office means the Administrative Office of the Courts.

Appellate Commission means the Governor's Commission on Appellate Judicial Selection created by Executive Order dated December 18, 1974, and any successor commission created by any reprocclamation of said Order.

Judicial Commission means either the Appellate Commission, or a Trial Court Commission, or both, according to context.

Lawyer means a member in good standing of the Bar of this State who is a member, including a voluntary member, of the Clients' Security Trust Fund and who is current in his payments to the Fund.

Member means an elected lawyer member of a judicial commission.

Office and Principal Office. Office means an office for the practice of law in which an attorney either as proprietor (alone or in partnership), or as an employee of such a proprietor or of an agency of government or of a business or other non-governmental concern, organization or association, usually devotes a substantial part of his time to the practice of law during ordinary business hours in the traditional work week. "Principal Office" means an office maintained for the practice of law in which an attorney, either as proprietor (alone or in partnership), or as an employee of such proprietor or of an agency of government or of a business or other non-governmental concern, organization or association, usually devotes the majority of his time to the practice of law during ordinary business hours in the traditional work week. In the case of both definitions, an attorney shall be deemed to be "in" such an office even though he is temporarily absent therefrom in the performance of duties of a law practice actively conducted from that office.

Trial Court Commission means the Governor's Commission on Trial Court Judicial Selection created by Executive Order dated December 18, 1974, and any

successor commissions created by any reproclamation of said Order.

II

Commission on Appellate Court Judicial Selection

1. Allocation of Member Positions.

There shall be one member of the Appellate Commission from each Appellate Judicial Circuit.

2. Eligibility to Vote.

Any lawyer who either resides or maintains an office in this State is eligible to vote for the member of the Appellate Commission to be elected from the Appellate Judicial Circuit in which the lawyer either resides or maintains his office, but no lawyer may vote in more than one Appellate Judicial Circuit.

3. Any one who either resides or maintains an office within the State and who [is not an elected governmental official or a full-time Federal, State, or municipal official] MEETS THE ELIGIBILITY REQUIREMENTS OF THE EXECUTIVE ORDER ESTABLISHING JUDICIAL NOMINATING COMMISSIONS is eligible to serve as the Appellate Commission member from the Appellate Judicial Circuit in which he either resides or maintains his office.

4. Nominations.

Nomination for election as a member of the Appellate Commission shall be by written petition filed with the Administrative Office. Each petition shall state the name of the nominee and the Appellate Judicial Circuit from which he seeks election. The nominee shall verify in the petition his home and office addresses, his status as a lawyer and his intent to serve if elected. Each petition shall be signed by at least fifteen lawyers, other than the nominee, each of whom shall maintain his principal office in the Appellate Judicial Circuit from which the nominee is being nominated. Each lawyer who signs the petition shall also verify in the petition the address and the Appellate Judicial Circuit in which his principal office is located. No lawyer may be nominated from more than one Appellate Judicial Circuit in the same election.

5. Ballots.

As soon as practicable after the close of nominations under Regulation 17, the Administrative Office shall mail or deliver the ballots and eligibility cards for an Appellate Judicial Circuit to the eligible voters in that Circuit. Ballots shall list the nominees in each Appellate Judicial Circuit in alphabetical order and shall contain a block printed next to the name of each nominee, to be used in voting. Ballots shall set forth the date of mailing thereof and instructions advising the voter that he has the right to vote for one nominee from his Appellate Judicial Circuit. The eligibility card shall contain a legend and signature line for the voter to use in verification of his voter eligibility.

6. Voting.

Each voter may vote for one nominee from the Appellate Judicial Circuit in which he either resides or maintains an office. No voter may vote for more than one nominee. In order to be valid both (1) the voter's ballot, enclosed in a plain sealed envelope, and (2) the eligibility card, signed by the voter, must be returned to the Administrative Office within 15 days of the date of mailing marked on the ballot. No write-in voting is permitted.

7. Elections - Ties.

In each Appellate Judicial Circuit, the nominee from that Circuit who receives the highest number of votes of all votes cast by the eligible voters of that Circuit shall be elected. In the event of a tie vote between two or more nominees from the same circuit, the member shall be selected from among the nominees so tied by lot, pursuant to procedures prescribed by the Administrator.

III

Commissions on Trial Court Judicial Selection

8. In each multi-county Judicial Circuit there shall be at least one member of the Judicial Commission for that circuit [from] WHO MAINTAINS HIS PRINCIPAL OFFICE FOR THE PRACTICE OF LAW IN each county from which there is a nominee. Such members are hereinafter called "county members."

9. Any lawyer who [both resides and] IS REGISTERED TO VOTE IN STATE ELECTIONS AND WHO maintains his principal office in this State is eligible to vote for all the members of the Trial Court Commission to be elected from the Judicial Circuit in which he maintains his principal office.

10. Any eligible voter under Regulation 9 who [is not an elected governmental official or a full-time Federal, State, or municipal official or employee] MEETS THE ELIGIBILITY REQUIREMENTS OF THE EXECUTIVE ORDER ESTABLISHING NOMINATING COMMISSIONS is eligible for election to the Trial Court Commission for that Judicial Circuit in which he maintains his principal office.

11. Nominations.

Nomination for election as a member of a Trial Court Commission shall be by written petition filed with the Administrative Office. Each petition shall state the name of the nominee and the Judicial Circuit from which he seeks election. The nominee shall verify in the petition his status as a lawyer, HIS STATUS AS A REGISTERED VOTER, [his home and] HIS principal office [addresses] ADDRESS, and his intent to serve if elected. Each petition shall be signed by at least fifteen voters, other than the nominee, who are eligible to vote for the nominee. In all circuits other than the Eighth Judicial Circuit, at least three of the lawyers who sign the petition shall maintain their principal office in a county of the Judicial Circuit other than the county in which the nominee maintains his principal office. Each lawyer who signs the petition shall also verify in the petition the address and county in which his principal office is located. No lawyer may be nominated from more than one Judicial Circuit in the same election.

12. Ballots.

As soon as practicable after the close of nominations under Regulation 17, the Administrative Office shall mail or deliver the ballots and eligibility cards for a Judicial Circuit to the eligible voters in that Circuit. In all circuits other than the Eighth Judicial Circuit, ballots shall group the nominees according to the respective counties in the circuit in which the nominees maintain their principal offices. On all ballots, a block shall be printed next to the name of each nominee, to be used in voting. Ballots shall set forth the date of mailing and contain instructions to the voter consistent with Regulation 13. The eligibility card shall contain a legend and signature line for the voter to use in verification of his voter eligibility.

13. Voting.

Each voter in the Eighth Judicial Circuit, as a condition of the validity of his ballot, shall vote for six nominees. Each voter in any other circuit, as a condition of the validity of his ballot, shall cast that number of votes as the number of members remaining to be elected after the close of nominations, REDUCED BY ONE FOR EACH COUNTY IN THE CIRCUIT AS TO WHICH THERE IS NO NOMINEE. Of these votes, at least one vote shall be cast for a nominee from each county in that circuit from which there are nominees on the ballot. A voter shall indicate his choices by marking in the block next to the names of the nominees for whom he is voting. In order to be valid both (1) the voter's ballot, enclosed in a plain, sealed envelope; and (2) the eligibility card, signed by the voter, must be returned to the Administrative Office within 15 days of the date of mailing marked on the ballot. No write-in voting shall be permitted.

14. Elections - Ties.

a. In the Eighth Judicial Circuit, the six nominees who receive the

highest number of votes cast shall be elected to the Judicial Commission for that circuit.

b. In all other circuits: the nominee from each county who is either the sole nominee from that county or who receives the highest number of votes cast by the voters throughout the Judicial Circuit among all the nominees from that county shall be elected to the Judicial Commission for that Circuit as a county member, and those nominees who receive the highest number of votes cast by the voters throughout the circuit among all nominees in the circuit, excluding county members, shall be elected to any remaining member position on the Judicial Commission for that circuit.

c. In the event of a tie vote between two or more nominees, the member shall be selected from among the nominees so tied by lot, pursuant to procedures prescribed by the Administrator.

General Provisions

15. Certification - Deposit of Ballots.

The Administrator shall supervise the tabulation of the ballots and shall certify the results of each election to the Governor. The Administrator shall retain the ballots and voter eligibility cards for a period of six months from the deadline for receipt of ballots. No one shall be permitted to inspect the ballots or eligibility cards until after the election results have been certified.

16. Vacancy.

In the event of a vacancy in the position of a member of a Judicial Commission, the members of that Judicial Commission shall by majority vote fill the vacancy for the balance of the remaining term. Any lawyer so selected shall meet all eligibility requirements for the vacant position. If the vacancy occurs during the term of a member of a Trial Court Commission, the person selected to fill the vacancy shall, in addition, maintain his principal office in the county in which his predecessor maintained his principal office.

17. Closing Date for Nominations.

In elections for Judicial Commissions, the deadline for the filing of petitions of nominations is February 13, 1975.

18. Lack of Nomination.

If no valid nomination of a candidate for a lawyer membership on a Judicial Commission established by the Executive Order of December 18, 1974, has been received by the Administrative Office by the closing date established by Regulation 17, the Court of Appeals shall appoint a lawyer to fill that position. The lawyer shall possess the eligibility requirements specified for a member of that Commission. IN MAKING APPOINTMENTS UNDER THIS PARAGRAPH, THE COURT OF APPEALS SHALL ASSURE THAT EACH TRIAL COURT COMMISSION INCLUDES AT LEAST ONE LAWYER MEMBER FROM EACH COUNTY IN THE CIRCUIT, IF EACH COUNTY IN THE CIRCUIT INCLUDES AT LEAST ONE LAWYER WHO IS QUALIFIED FOR SERVICE ON THE COMMISSION AND WILLING TO ACCEPT THE APPOINTMENT.

19. Interpretation.

In all matters pertaining to the interpretation and implementation of these Regulations or the elections held pursuant to them, the determinations and decisions of the Administrator shall be final and binding; and

WHEREAS, the Court of Appeals is of the opinion that the regulations so submitted and above set forth in full, properly and appropriately fulfill the purpose and intent of the Governor's Executive Order;

NOW THEREFORE, it is this 6th day of January, 1975, ORDERED by the Court of Appeals of Maryland that, effective this date, the aforesaid regulations, quoted above, and made a part hereof, are approved by the Court of Appeals of Maryland as directions to the Administrative Office of the Courts and the

State Court Administrator, to conduct the elections for the lawyer members of the commissions directed to be created by the aforesaid Executive Order of the Governor; and it is further

ORDERED (1) that the elections be conducted pursuant to those regulations;
(2) that the regulations be filed with the Clerk of the Court of Appeals;
and
(3) that the State Court Administrator keep on file in his office copies of the regulations and make publication and distribution thereof as he may deem expedient and appropriate.

IN THE COURT OF APPEALS OF MARYLAND

ADMINISTRATIVE ORDER

ADOPTING RULES OF PROCEDURE FOR THE APPELLATE AND TRIAL COURTS

JUDICIAL NOMINATING COMMISSIONS

WHEREAS by Executive Order dated December 18, 1974, the Governor restructured the Appellate Judicial Nominating Commission and the several Trial Court Judicial Nominating Commissions; and

WHEREAS as a part of that Order the Governor directed that each Commission should operate under procedures specified in rules adopted by the Chief Judge of the Court of Appeals, consistent with the Executive Order;

NOW THEREFORE, I, Robert C. Murphy, Chief Judge of the Court of Appeals, do on this 1st day of March, 1975, adopt rules for governing the procedures of said Commissions, effective March 1, 1975.

1. Upon notification by the Secretary that a vacancy exists or is about to occur in a judicial office for which a Commission is to make nominations, the Chairman in consultation with the Secretary, shall establish a date for an initial Commission meeting to consider nominations for the vacancy. The Secretary shall advise Commission members of the date, place, and time of the meeting and shall notify the Maryland State Bar Association, Inc., and other appropriate bar associations of the vacancy. In addition, the Secretary, in consultation with the Chairman, shall provide for APPROPRIATE newspaper notice of the existence of the vacancy [as appropriate], AND THE CHAIRMAN OR SOME OTHER MEMBER DESIGNATED BY THE COMMISSION, SHALL ISSUE ONE OR MORE PRESS RELEASES TO ONE OR MORE NEWSPAPERS CIRCULATED WITHIN THE CIRCUIT IN WHICH THE VACANCY EXISTS. THE PRESS RELEASE SHOULD NOTE THE VACANCY, EXPLAIN THE RESPONSIBILITIES AND FUNCTIONS OF THE NOMINATING COMMISSION, AND INVITE COMMENTS BY THE PUBLIC WITH RESPECT TO CANDIDATES QUALIFIED TO FILL IT.

2. Personal data questionnaires for any applicant for appointment to the judicial vacancy shall be made available through the Chairman of the Commission or any Commission member, or by the Secretary. Every completed questionnaire shall be filed with the Secretary on or before a date specified in the public notice advising of the vacancy. The Secretary shall distribute to each Commission member a copy of every questionnaire filed with him. AN INDIVIDUAL WHO REAPPLIES TO A COMMISSION WITH WHICH HE HAS FILED A PERSONAL DATA QUESTIONNAIRE WITHIN TWELVE CALENDAR MONTHS IMMEDIATELY PRECEDING THE REAPPLICATION NEED NOT FILE A COMPLETE NEW QUESTIONNAIRE,

BUT MAY SUBMIT TO THE SECRETARY A LETTER STATING THAT HE IS REAPPLYING AND SETTING FORTH ANY CHANGES THAT HAVE OCCURRED SINCE THE SUBMISSION OF HIS QUESTIONNAIRE. THE SECRETARY SHALL DISTRIBUTE THESE LETTERS TO COMMISSION MEMBERS IN THE SAME MANNER AS QUESTIONNAIRES. Distribution shall be completed not less than three days prior to the meeting date. A COMMISSION MEETING MAY NOT BE HELD SOONER THAN SEVEN CLEAR CALENDAR DAYS FOLLOWING THE DATE SET AS THE DEADLINE FOR FILING PERSONAL DATA QUESTIONNAIRES.

3(A) Each Commission shall evaluate every person who files a questionnaire with the Secretary.

(B) A Commission may conduct [personal interviews or] any other investigation deemed necessary. EACH COMMISSION IS ENCOURAGED TO CONDUCT A PERSONAL INTERVIEW WITH EVERY CANDIDATE WHO APPLIES TO IT, AT LEAST WITH RESPECT TO THAT CANDIDATE'S INITIAL APPLICATION TO THE COMMISSION. THE INTERVIEWS MAY BE CONDUCTED BY THE FULL COMMISSION OR BY A TEAM OR COMMITTEE OF THE COMMISSION.

(C) IF A COMMISSION RECEIVES SUBSTANTIAL ADVERSE INFORMATION ABOUT A CANDIDATE, IT SHALL EITHER INFORM THE CANDIDATE OF THAT INFORMATION AND GIVE HIM AN OPPORTUNITY TO RESPOND TO IT, OR IT SHALL IGNORE THE ADVERSE INFORMATION IN ITS EVALUATION OF THE CANDIDATE.

(D) [It] THE COMMISSION shall select and nominate to the Governor the names of the persons it finds to be legally and most professionally qualified. IN DOING SO, EACH COMMISSION MEMBER SHALL VOTE ONLY FOR THOSE PERSONS HE CONSCIENTIOUSLY BELIEVES TO BE LEGALLY AND MOST FULLY PROFESSIONALLY QUALIFIED. NOT LESS THAN NINE COMMISSION MEMBERS SHALL BE PRESENT AT THE VOTING SESSION. VOTING BY PROXY OR ABSENTEE BALLOT IS NOT PERMITTED.

(E) No person's name may be submitted unless he has been found legally and most fully professionally qualified by vote of a majority of the [entire] FULL authorized membership of the commission, taken by secret ballot.

4. The Commission shall report to the Governor, in writing, the names of the persons it nominates as legally and fully professionally qualified to fill the vacancy. The names of the person shall be listed in alphabetical order. The report shall be submitted within 70 days after notification by the Commission's Secretary that a vacancy exists or is about to occur. The Commission shall release its report to the public concurrently with submission of the report to the Governor.

[4A] 5. (a) A Commission member may not attend or participate in any way in commission deliberations respecting a judicial appointment for which (1) a near relative of the commission member by blood or marriage, or (2) a law partner, associate, or employee of the commission member is a candidate.

(b) For the purpose of this rule, "a near relative by blood or marriage" includes a connection by marriage, consanguinity or affinity, within the third degree, counting down from a common ancestor to the more remote.

(c) IF A COMMISSION MEMBER AND A CANDIDATE FOR NOMINATION TO JUDICIAL OFFICE HAVE A PERSONAL, BUSINESS, PROFESSIONAL, OR POLITICAL RELATIONSHIP WHICH IS SUBSTANTIAL, ALTHOUGH NOT AS CLOSE AS A RELATIONSHIP DESCRIBED IN THE PRECEDING SUBSECTIONS OF THIS RULE, THE COMMISSION MEMBER SHALL DISCLOSE THE RELATIONSHIP TO THE OTHER MEMBERS OF THE COMMISSION PRESENT AT A MEETING TO CONSIDER CANDIDATES FOR THE VACANCY. THE DISCLOSING COMMISSIONER'S FURTHER PARTICIPATION IN THAT MEETING SHALL BE DETERMINED BY VOTE OF A MAJORITY OF THE OTHER COMMISSION MEMBERS PRESENT AT THE MEETING.

[5] 6. Other rules or regulations heretofor adopted by any Judicial Selection Commission shall remain in full force and effect except to the extent inconsistent with the foregoing regulations.

JUDICIAL NOMINATING COMMISSION

CONFIDENTIAL PERSONAL DATA QUESTIONNAIRE

NOTICE TO APPLICANTS FOR JUDICIAL APPOINTMENTS

The information provided by you in this questionnaire will be held in confidence by the members of the Judicial Nominating Commission and those persons that the Commission feels it would be appropriate to consult for necessary verification. All statements made by applicants are subject to such verification by any suitable means deemed appropriate by the Commission. In the event you are nominated, a copy of the questionnaire will be forwarded to the Governor's Office.

The Commission will not forward a copy of your questionnaire to the Maryland State or any local Bar Association. Should you wish any Bar Association to receive your questionnaire, to aid it in making recommendations to the Commission, it is your responsibility to forward a copy of the questionnaire to the appropriate Bar Associations.

Should the data you provide be found inadequate or incomplete for evaluation purposes, the Commission may call upon you to provide, either in written form or by personal appearance, such additional data that may be deemed appropriate to permit a suitable evaluation of your qualifications for consideration.

You are requested to complete the information called for in this questionnaire in complete detail. Further, indicate your willingness to accept the appointment should you be favorably recommended by this Commission.

* * * * *

I, the undersigned, hereby submit the attached questionnaire and request that I be considered for the vacancy existing in the

(Indicate Court)

Should I be favorably considered, I will accept appointment to the court indicated.

Date of Application

Full Name of Applicant (Signed)

Full Name of Applicant (Printed)

CONFIDENTIAL PERSONAL DATA QUESTIONNAIRE

1.

LAST NAME	FIRST	MIDDLE	MAIDEN
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2. Give your full office address and telephone number.
3. Give your full home address, zip code, telephone number, and length of residency at this address.
4. Give the date and place of your birth.
5. If you are a naturalized citizen, please give the date and place of naturalization.
6. Indicate your marital status.
7. Indicate all colleges and law schools you have attended, including dates of attendance, degrees awarded, and any reasons for leaving a college or law school if no degree from that institution was awarded.
8. List all states and jurisdictions in which you are or ever have been admitted to practice, including the year of admission in each.
9. List all courts in which you are presently admitted to practice, including the dates of admission in each court.

10. Indicate if you are actively engaged in the practice of law, and if you are a member of a law firm, indicate your status, whether you are a partner, and give the nature and duration of your relationship with all law firms with which you have been associated.

11. Describe the general character of your present practice. Indicate the character of your typical clients and mention any legal specialties which you possess. If the nature of your practice has been substantially different at any time in the past, give the necessary details, including the character of such and the periods involved.
 - (a) Do you appear in court on a regular basis?

 - (b) Indicate what percentage of your appearances in the last five years was in the following courts:
 - (1) The Federal Court
 - (2) The State Court of Record
 - (3) Other Courts

 - (c) Approximately what percentage of litigation did you handle in the last five years which was:
 - (1) Civil
 - (2) Criminal
 - (3) Corporate
 - (4) Tax
 - (5) Other (Specify)

12. Indicate whether you hold or have held any public office, either appointed or elected, and whether a member of any board or commission, either currently or in the past. Give the dates and your responsibilities.
13. Have you ever held a judicial or quasi-judicial office? If so, give the court and the periods of service.
14. Please state any military service, including the highest rank obtained and dates of service as well as your form of discharge or release from service.
15. Have you ever engaged in any occupation, business, or profession other than the practice of law, and if so, give the details, including dates. This should include any employment other than that held while a student or for periods of less than 30 days.
16. Are you now or have you been during the past ten years an officer or director of any business organization or otherwise engaged in the management of any business enterprise? If so, give details, including the title of your position, the nature of your duties, and term of your service.

SPECIAL NOTE:

If any position held by you now may be in conflict with your possible appointment to the existing vacancy in the Court, would you be willing to resign from such position or give up any activities which may relate to such conflict? If your response is "no", please explain fully your reasons for believing that no conflict would exist.

17. Have you ever been charged, arrested, or held by Federal, State, or other law-enforcement authorities for violation of any Federal, State, County, or Municipal law, regulation or ordinance? Do not include traffic violations for which a fine of \$25.00 or less was imposed, unless otherwise indicated.
18. Have you ever been sued by a client? If so, please give all particulars.
19. Give particulars of any other litigation in which you are now or previously have been either a plaintiff or defendant.
20. Are you now or have you ever been a subject of a Grand Jury proceeding?
If your answer is "Yes", give all particulars.
21. Have you ever been disciplined or cited for breach of ethics or unprofessional conduct or have you ever been the subject of a complaint to any court, administrative agency, bar association, disciplinary committee, or other professional group to include the Attorney Grievance Commission and the Clients' Security Trust Fund? If so, please give all particulars to include final disposition of findings.
22. What is the present state of your health, and indicate if you have been hospitalized or otherwise prevented from working due to injury or illness physical or mental, or otherwise incapacitated for a period in excess of ten days during the past ten years? Please give particulars to include the causes, the dates, and places of confinement, and the present status of the condition which caused each such confinement or incapacitation.

23. Do you presently suffer from any impairment of eyesight or hearing or other handicaps? If so, please give details and particulars.
24. Have you ever published any legal books or articles, and if so, please list them, giving the citations and dates.
25. Have you ever taught any subjects in any college or school as an instructor or professor or have you acted as a paid lecturer in any public or private institution? Please give dates and schools and all other particulars.
26. List all professional honors, prizes, awards, or other forms of recognition which you have received.
27. List all organizations, civic and fraternal, or trade groups, professional societies and similar organizations of which you are now a member or have been in the past, giving the dates of such memberships and the titles of any offices you might have held.
28. Please list all memberships in Bar Associations of any type or jurisdiction to include dates, offices, or positions held on any committee and other data you consider of particular significance.

29. Is there any information in your background which might be considered detrimental or which should be taken into consideration by the Commission in evaluating your application for consideration? If so, give all particulars to include dates and incidents.
30. Give the names and addresses of at least three individuals who are familiar with your professional qualifications, and who have known you for not less than the five immediately preceding years.

(Use additional sheets for added comments relating to the foregoing and refer to each question number.)

* * * * *

I submit the foregoing data to the Judicial Nominating Commission and understand that it is subject to verification and authorize any person or custodian of records to release any and all information that may be available concerning me.

Date

Signature

